

**78B-6-101. Title.**

This part is known as the "Utah Adoption Act."

Enacted by Chapter 3, 2008 General Session

**78B-6-102. Legislative intent and findings -- Best interest of child -- Interests of each party.**

(1) It is the intent and desire of the Legislature that in every adoption the best interest of the child should govern and be of foremost concern in the court's determination.

(2) The court shall make a specific finding regarding the best interest of the child, taking into consideration information provided to the court pursuant to the requirements of this chapter relating to the health, safety, and welfare of the child and the moral climate of the potential adoptive placement.

(3) The Legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.

(4) The Legislature specifically finds that it is not in a child's best interest to be adopted by a person or persons who are cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. Nothing in this section limits or prohibits the court's placement of a child with a single adult who is not cohabiting as defined in this part.

(5) The Legislature also finds that:

(a) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;

(b) an unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(c) adoptive children have a right to permanence and stability in adoptive placements;

(d) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child;

(e) an unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth; and

(f) the state has a compelling interest in requiring unmarried biological fathers to demonstrate commitment by providing appropriate medical care and financial support and by establishing legal paternity, in accordance with the requirements of this chapter.

(6) (a) In enacting this chapter, the Legislature has prescribed the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection.

(b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or greatly diminished in constitutional significance by his failure to timely

exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.

(c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. The Legislature finds that the interests of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.

(d) The Legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings, and has provided a method for absolute protection of an unmarried biological father's rights by compliance with the provisions of this chapter. In balancing the rights and interests of the state, and of all parties affected by fraud, specifically the child, the adoptive parents, and the unmarried biological father, the Legislature has determined that the unmarried biological father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

(e) An unmarried biological father has the primary responsibility to protect his rights.

(f) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt and full commitment to his parental responsibilities, and establishes paternity.

(7) The Legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-103. Definitions.**

As used in this part:

(1) "Adoptee" means a person who:

(a) is the subject of an adoption proceeding; or

(b) has been legally adopted.

(2) "Adoption" means the judicial act that:

(a) creates the relationship of parent and child where it did not previously exist;

and

(b) except as provided in Subsection 78B-6-138(2), terminates the parental rights of any other person with respect to the child.

(3) "Adoption service provider" means a:

(a) child-placing agency; or

(b) licensed counselor who has at least one year of experience providing professional social work services to:

(i) adoptive parents;

(ii) prospective adoptive parents; or

- (iii) birth parents.
- (4) "Adoptive parent" means a person who has legally adopted an adoptee.
- (5) "Adult" means a person who is 18 years of age or older.
- (6) "Adult adoptee" means an adoptee who is 18 years of age or older.
- (7) "Adult sibling" means a brother or sister of the adoptee, who is 18 years of age or older and whose birth mother or father is the same as that of the adoptee.
- (8) "Birth mother" means the biological mother of a child.
- (9) "Birth parent" means:
  - (a) a birth mother;
  - (b) a man whose paternity of a child is established;
  - (c) a man who:
    - (i) has been identified as the father of a child by the child's birth mother; and
    - (ii) has not denied paternity; or
  - (d) an unmarried biological father.
- (10) "Child-placing agency" means an agency licensed to place children for adoption under Title 62A, Chapter 4a, Part 6, Child Placing.
- (11) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.
- (12) "Division" means the Division of Child and Family Services, within the Department of Human Services, created in Section 62A-4a-103.
- (13) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.
- (14) "Genetic and social history" means a comprehensive report, when obtainable, on an adoptee's birth parents, aunts, uncles, and grandparents, which contains the following information:
  - (a) medical history;
  - (b) health status;
  - (c) cause of and age at death;
  - (d) height, weight, and eye and hair color;
  - (e) ethnic origins;
  - (f) where appropriate, levels of education and professional achievement; and
  - (g) religion, if any.
- (15) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological, physiological, and medical care history.
- (16) "Identifying information" means the name and address of a pre-existing parent or adult adoptee, or other specific information which by itself or in reasonable conjunction with other information may be used to identify that person.
- (17) "Licensed counselor" means a person who is licensed by the state, or another state, district, or territory of the United States as a:
  - (a) certified social worker;
  - (b) clinical social worker;
  - (c) psychologist;
  - (d) marriage and family therapist;
  - (e) professional counselor; or

(f) an equivalent licensed professional of another state, district, or territory of the United States.

(18) "Man" means a male individual, regardless of age.

(19) "Office" means the Office of Vital Records and Statistics within the Department of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.

(20) "Parent," for purposes of Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.

(21) "Potential birth father" means a man who:

(a) is identified by a birth mother as a potential biological father of the birth mother's child, but whose genetic paternity has not been established; and

(b) was not married to the biological mother of the child described in Subsection (21)(a) at the time of the child's conception or birth.

(22) "Pre-existing parent" means:

(a) a birth parent; or

(b) a person who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.

(23) "Prospective adoptive parent" means a person who seeks to adopt an adoptee.

(24) "Unmarried biological father" means a person who:

(a) is the biological father of a child; and

(b) was not married to the biological mother of the child described in Subsection (24)(a) at the time of the child's conception or birth.

Amended by Chapter 340, 2012 General Session

#### **78B-6-104. Limitations.**

(1) Sections 78B-6-143 through 78B-6-145 do not apply to adoptions by a stepparent whose spouse is the adoptee's parent.

(2) Sections 78B-6-143 through 78B-6-145 apply only to adoptions of adoptees born in this state.

Amended by Chapter 237, 2010 General Session

#### **78B-6-105. District court venue -- Jurisdiction of juvenile court -- Jurisdiction over nonresidents -- Time for filing.**

(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:

(a) in the district where the prospective adoptive parent resides;

(b) if the prospective adoptive parent is not a resident of this state, in the district where:

(i) the adoptee was born;

(ii) the adoptee resides on the day on which the petition is filed; or

(iii) a parent of the proposed adoptee resides on the day on which the petition is filed; or

(c) with the juvenile court as provided in Subsection 78A-6-103(1).

(2) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of the court where the adoption proceedings were commenced under Subsection (1).

(3) A petition for adoption:

(a) may be filed before the birth of a child;

(b) may be filed before or after the adoptee is placed in the home of the petitioner for the purpose of adoption; and

(c) shall be filed no later than 30 days after the day on which the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:

(i) the time for filing has been extended by the court; or

(ii) the adoption is arranged by a child-placing agency in which case the agency may extend the filing time.

(4) (a) If a person whose consent for the adoption is required under Section 78B-6-120 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

(b) The notice may not include the name of:

(i) a prospective adoptive parent; or

(ii) an unmarried mother without her consent.

(5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction over the person served in the same manner and to the same extent as if the person served was served personally within the state.

(6) In the case of service outside the state, service completed not less than five days before the time set in the notice for appearance of the person served shall be sufficient to confer jurisdiction.

(7) Computation of periods of time not otherwise set forth in this section shall be made in accordance with the Utah Rules of Civil Procedure.

Amended by Chapter 458, 2013 General Session

**78B-6-106. Responsibility of each party for own actions -- Fraud or misrepresentation.**

(1) Each parent of a child conceived or born outside of marriage is responsible for his or her own actions and is not excused from strict compliance with the provisions of this chapter based upon any action, statement, or omission of the other parent or third parties.

(2) Any person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A fraudulent representation is not a defense to strict compliance with the requirements of this chapter, and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the offended party. Custody determinations shall be based on the best interest of the child, in accordance with the provisions of Section 78B-6-133.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-107. Compliance with the Interstate Compact on Placement of Children -- Compliance with the Indian Child Welfare Act.**

(1) In any adoption proceeding the petition for adoption shall state whether the child was born in another state and, if so, both the petition and the court's final decree of adoption shall state that the requirements of Title 62A, Chapter 4a, Part 7, Interstate Compact on Placement of Children, have been complied with.

(2) In any adoption proceeding involving an "Indian child," as defined in 25 U.S.C. Sec. 1903, a child-placing agency and the petitioners shall comply with the Indian Child Welfare Act, Title 25, Chapter 21, of the United States Code.

Renumbered and Amended by Chapter 3, 2008 General Session

Amended by Chapter 137, 2008 General Session

**78B-6-108. Alien child -- Evidence of lawful admission to United States required.**

(1) As used in this section, "alien child" means a child under 16 years of age who is not considered a citizen or national of the United States by the United States Immigration and Naturalization Service.

(2) Any person adopting an alien child shall file with the petition for adoption written evidence from the United States Immigration and Naturalization Service that the child was inspected and:

(a) admitted into the United States for permanent residence;

(b) admitted into the United States temporarily in one of the lawful nonimmigrant categories specified in 8 U.S.C. Section 1101(a)(15); or

(c) paroled into the United States pursuant to 8 U.S.C. Section 1182(d)(5).

(3) The 1992 amendments to this section are retroactive to September 1, 1984. Any adoption decree entered after September 1, 1984, is considered valid if the requirements of Subsection (2), as amended, were met.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-109. Determination of rights prior to adoption petition.**

(1) (a) Any interested person may petition a court having jurisdiction over adoption proceedings for a determination of the rights and interests of any person who may claim an interest in a child under this part.

(b) The petition described in Subsection (1) may be filed at any time before the finalization of the adoption, including before:

(i) the child's birth;

(ii) a petition for adoption is filed; or

(iii) a petition to terminate parental rights is filed.

(2) If a petition for adoption or a petition to terminate parental rights has been filed in district court, the petitioner or any interested person may, without filing a separate petition, move the court for a determination of the rights and interests of any person who may claim an interest in a child under this part.

Amended by Chapter 237, 2010 General Session

**78B-6-110. Notice of adoption proceedings.**

(1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman:

(i) is considered to be on notice that a pregnancy and an adoption proceeding regarding the child may occur; and

(ii) has a duty to protect his own rights and interests.

(b) An unmarried biological father is entitled to actual notice of a birth or an adoption proceeding with regard to his child only as provided in this section or Section 78B-6-110.5.

(2) Notice of an adoption proceeding shall be served on each of the following persons:

(a) any person or agency whose consent or relinquishment is required under Section 78B-6-120 or 78B-6-121, unless that right has been terminated by:

(i) waiver;

(ii) relinquishment;

(iii) actual consent, as described in Subsection (12); or

(iv) judicial action;

(b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health, in accordance with Subsection (3);

(c) any legally appointed custodian or guardian of the adoptee;

(d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the petition;

(e) the adoptee's spouse, if any;

(f) any person who, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;

(g) a person who is:

(i) openly living in the same household with the child at the time the consent is executed or relinquishment made; and

(ii) holding himself out to be the child's father; and

(h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption, unless the court finds that the mother's spouse is not the child's father under Section 78B-15-607.

(3) (a) In order to preserve any right to notice, an unmarried biological father shall, consistent with Subsection (3)(d):

(i) initiate proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i) with the office of vital statistics within the Department of Health.

(b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78B-3-307.

(c) The Department of Health shall provide forms for the purpose of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the office of the county health department in each county.

(d) When the state registrar of vital statistics receives a completed form, the registrar shall:

- (i) record the date and time the form was received; and
- (ii) immediately enter the information provided by the unmarried biological father in the confidential registry established by Subsection 78B-6-121(3)(c).

(e) The action and notice described in Subsection (3)(a):

- (i) may be filed before or after the child's birth; and

- (ii) shall be filed prior to the mother's:

- (A) execution of consent to adoption of the child; or

- (B) relinquishment of the child for adoption.

(4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(5) The notice required by this section:

- (a) may be served at any time after the petition for adoption is filed, but may not be served on a birth mother before she has given birth to the child who is the subject of the petition for adoption;

- (b) shall be served at least 30 days prior to the final dispositional hearing;

- (c) shall specifically state that the person served shall fulfill the requirements of Subsection (6)(a), within 30 days after the day on which the person receives service if the person intends to intervene in or contest the adoption;

- (d) shall state the consequences, described in Subsection (6)(b), for failure of a person to file a motion for relief within 30 days after the day on which the person is served with notice of an adoption proceeding;

- (e) is not required to include, nor be accompanied by, a summons or a copy of the petition for adoption; and

- (f) shall state where the person may obtain a copy of the petition for adoption.

(6) (a) A person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

- (i) within 30 days after the day on which the person was served with notice of the adoption proceeding;

- (ii) setting forth specific relief sought; and

- (iii) accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.

(b) A person who fails to fully and strictly comply with all of the requirements described in Subsection (6)(a) within 30 days after the day on which the person was served with notice of the adoption proceeding:

- (i) waives any right to further notice in connection with the adoption;

- (ii) forfeits all rights in relation to the adoptee; and

- (iii) is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(7) Service of notice under this section shall be made as follows:

- (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah Rules of Civil Procedure.

- (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the

court shall designate the content of the notice regarding the identity of the parties.

(iii) The notice described in this Subsection (7)(a) may not include the name of a person seeking to adopt the adoptee.

(b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient.

(ii) If the service described in Subsection (7)(b)(i) cannot be completed after two attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.

(8) The notice required by this section may be waived in writing by the person entitled to receive notice.

(9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(11) Except as to those persons whose consent to an adoption is required under Section 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person served to:

(a) intervene in the adoption; and

(b) present evidence to the court relevant to the best interest of the child.

(12) In order to be excused from the requirement to provide notice as described in Subsection (2)(a) on the grounds that the person has provided consent to the adoption proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described in Section 78B-6-120.1.

Amended by Chapter 410, 2014 General Session

**78B-6-110.1. Prebirth notice to presumed father of intent to place a child for adoption.**

(1) As used in this section, "birth father" means:

(a) a potential biological father; or

(b) an unmarried biological father.

(2) Before the birth of a child, the following individuals may notify a birth father of the child that the mother of the child is considering an adoptive placement for the child:

(a) the child's mother;

(b) a licensed child placing agency;

(c) an attorney representing a prospective adoptive parent of the child; or

(d) an attorney representing the mother of the child.

(3) Providing a birth father with notice under Subsection (2) does not obligate the mother of the child to proceed with an adoptive placement of the child.

(4) The notice described in Subsection (2) shall include the name, address, and telephone number of the person providing the notice, and shall include the following information:

- (a) the mother's intent to place the child for adoption;
- (b) that the mother has named the person receiving this notice as a potential birth father of her child;
- (c) the requirements to contest the adoption, including taking the following steps within 30 days after the day on which the notice is served:
  - (i) initiating proceedings to establish or assert paternity in a district court of Utah within 30 days after the day on which notice is served, including filing an affidavit stating:
    - (A) that the birth father is fully able and willing to have full custody of the child;
    - (B) the birth father's plans to care for the child; and
    - (C) that the birth father agrees to pay for child support and expenses incurred in connection with the pregnancy and birth; and
  - (ii) filing a notice of commencement of paternity proceedings with the state registrar of vital statistics within the Utah Department of Health;
- (d) the consequences for failure to comply with Subsection (4)(c), including that:
  - (i) the birth father's ability to assert the right, if any, to consent or refuse to consent to the adoption is irrevocably lost;
  - (ii) the birth father will lose the ability to assert the right to contest any future adoption of the child; and
  - (iii) the birth father will lose the right, if any, to notice of any adoption proceedings related to the child;
- (e) that the birth father may consent to the adoption, if any, within 30 days after the day on which the notice is received, and that his consent is irrevocable; and
- (f) that no communication between the mother of the child and the birth father changes the rights and responsibilities of the birth father described in the notice.

(5) If the recipient of the notice described in Subsection (2) does not fully and strictly comply with the requirements of Subsection (4)(c) within 30 days after the day on which he receives the notice, he will lose:

- (a) the ability to assert the right to consent or refuse to consent to an adoption of the child described in the notice;
- (b) the ability to assert the right to contest any future adoption of the child described in the notice; and
- (c) the right to notice of any adoption proceedings relating to the child described in the notice.

(6) If an individual described in Subsection (2) chooses to notify a birth father under this section, the notice shall be served on a birth father in a manner consistent with the Utah Rules of Civil Procedure or by certified mail.

Enacted by Chapter 340, 2012 General Session

**78B-6-110.5. Out-of-state birth mothers and adoptive parents --  
Declaration regarding potential birth fathers.**

- (1) (a) For a child who is six months of age or less at the time the child is placed

with prospective adoptive parents, if, at any point during the time period beginning at the conception of the child and ending at the time the mother executes consent to adoption or relinquishment of the child for adoption, the birth mother or at least one of the adoptive parents has not resided in the state for 90 total days or more, as described in Subsection (1)(c), the birth mother shall file with the court a declaration regarding each potential birth father, in accordance with this section, before or at the time a petition for adoption is filed with the court.

(b) The birth mother shall search the putative father registry of each state where the birth mother believes the child may have been conceived and each state where the birth mother lived during her pregnancy, if the state has a putative father registry, to determine whether a potential birth father registered with the state's putative father registry.

(c) In determining whether the 90-day requirement is satisfied, the following apply:

- (i) the 90 days are not required to be consecutive;
- (ii) no absence from the state may be for more than seven consecutive days;
- (iii) any day on which the individual is absent from the state does not count toward the total 90-day period; and
- (iv) the 90-day period begins and ends during a period that is no more than 120 consecutive days.

(2) The declaration filed under Subsection (1) regarding a potential birth father shall include, for each potential birth father, the following information:

(a) if known, the potential birth father's name, date of birth, Social Security number, and address;

(b) with regard to a state's putative father registry in each state described in Subsection (1)(b):

- (i) whether the state has a putative father registry; and
- (ii) for each state that has a putative father registry, with the declaration, a certificate or written statement from the state's putative father registry that a search of the state's putative father registry was made and disclosing the results of the search;

(c) whether the potential birth father was notified of:

- (i) the birth mother's pregnancy;
- (ii) the fact that he is a potential birth father; or
- (iii) the fact that the birth mother intends to consent to adoption or relinquishment of the child for adoption, in Utah;

(d) each state where the birth mother lived during the pregnancy;

(e) if known, the state in which the child was conceived;

(f) whether the birth mother informed the potential birth father that she was traveling to or planning to reside in Utah;

(g) whether the birth mother has contacted the potential birth father while she was located in Utah;

(h) whether, and for how long, the potential birth father has ever lived with the child;

(i) whether the potential birth father has given the birth mother money or offered to pay for any of her expenses during pregnancy or the child's birth;

(j) whether the potential birth father has offered to pay child support;

(k) if known, whether the potential birth father has taken any legal action to establish paternity of the child, either in Utah or in any other state, and, if known, what action he has taken; and

(l) whether the birth mother has ever been involved in a domestic violence matter with the potential birth father.

(3) Based on the declaration regarding the potential birth father, the court shall order the birth mother to serve a potential birth father notice that she intends to consent or has consented to adoption or relinquishment of the child for adoption, if the court finds that the potential birth father:

(a) has taken sufficient action to demonstrate an interest in the child;

(b) has taken sufficient action to attempt to preserve his legal rights as a birth father, including by filing a legal action to establish paternity or filing with a state's putative father registry; or

(c) does not know, and does not have a reason to know, that:

(i) the mother or child are present in Utah;

(ii) the mother intended to give birth to the child in Utah;

(iii) the child was born in Utah; or

(iv) the mother intends to consent to adoption or relinquishment of the child for adoption in Utah.

(4) Notice under this section shall be made in accordance with Subsections 78B-6-110(7) through (12).

Enacted by Chapter 410, 2014 General Session

**78B-6-111. Criminal sexual offenses.**

A biological father is not entitled to notice of an adoption proceeding, nor is the consent of a biological father required in connection with an adoption proceeding, in cases where it is shown that the child who is the subject of the proceeding was conceived as a result of conduct which would constitute any sexual offense described in Title 76, Chapter 5, Part 4, regardless of whether the biological father is formally charged with or convicted of a criminal offense.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-112. District court jurisdiction over certain termination of parental rights proceedings.**

(1) A district court has jurisdiction to hear and decide a petition to terminate parental rights in a child if the party who filed the petition is seeking to terminate parental rights in the child for the purpose of facilitating the adoption of the child.

(2) A petition to terminate parental rights under this section may be:

(a) joined with a proceeding on an adoption petition; or

(b) filed as a separate proceeding before or after a petition to adopt the child is filed.

(3) A court may enter a final order terminating parental rights before a final decree of adoption is entered.

(4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to

proceedings to terminate parental rights as described in Section 78A-6-103.

(b) This section does not grant jurisdiction to a district court to terminate parental rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse, neglect, dependency, or termination of parental rights proceeding.

(5) The district court may terminate a person's parental rights in a child if:

(a) the person executes a voluntary consent to adoption, or relinquishment for adoption, of the child, in accordance with:

(i) the requirements of this chapter; or

(ii) the laws of another state or country, if the consent is valid and irrevocable;

(b) the person is an unmarried biological father who is not entitled to consent to adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;

(c) the person:

(i) received notice of the adoption proceeding relating to the child under Section 78B-6-110; and

(ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days after the day on which the person was served with notice of the adoption proceeding;

(d) the court finds, under Section 78B-15-607, that the person is not a parent of the child; or

(e) the person's parental rights are terminated on grounds described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the person's parental rights is in the best interests of the child.

Amended by Chapter 340, 2012 General Session

**78B-6-113. Prospective adoptive parent not a resident -- Preplacement requirements.**

(1) When an adoption petition is to be finalized in this state with regard to any prospective adoptive parent who is not a resident of this state at the time a child is placed in that person's home, the prospective adoptive parent shall:

(a) comply with the provisions of Sections 78B-6-128 and 78B-6-130; and

(b) (i) if the child is in state custody:

(A) submit fingerprints for a Federal Bureau of Investigation national criminal history record check through the Criminal and Technical Services Division of the Department of Public Safety in accordance with the provisions of Section 62A-2-120; or

(B) submit to a fingerprint based Federal Bureau of Investigation national criminal history record check through a law enforcement agency in another state, district, or territory of the United States; or

(ii) subject to Subsection (2), if the child is not in state custody:

(A) submit fingerprints for a Federal Bureau of Investigation national criminal history records check as a personal records check; or

(B) complete a criminal records check and child abuse database check for each state and, if available, country, where the prospective adoptive parent resided during the five years immediately preceding the day on which the adoption petition is to be finalized.

(2) For purposes of Subsection (1)(b)(ii):

(a) if the adoption is being handled by a human services program, as defined in Section 62A-2-101:

(i) the criminal history check described in Subsection (1)(b)(ii)(A) shall be submitted in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety; and

(ii) subject to Subsection (3), the criminal history check described in Subsection (1)(b)(ii)(B) shall be submitted in a manner acceptable to the court that will:

(A) preserve the chain of custody of the results; and

(B) not permit tampering with the results by a prospective adoptive parent or other interested party; and

(b) if the adoption is being handled by a private attorney, and not a human services program, the criminal history checks described in Subsection (1)(b)(ii), shall be:

(i) submitted in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety; or

(ii) subject to Subsection (3), submitted in a manner acceptable to the court that will:

(A) preserve the chain of custody of the results; and

(B) not permit tampering with the results by a prospective adoptive parent or other interested party.

(3) In order to comply with Subsection (2)(a)(ii) or (b)(ii), the manner in which the criminal history check is submitted shall be approved by the court.

(4) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of Human Services shall comply with Section 78B-6-131.

Amended by Chapter 340, 2012 General Session

**78B-6-114. Adoption by married persons -- Consent.**

(1) A married man who is not lawfully separated from his wife may not adopt a child without the consent of his wife, if his wife is capable of giving consent.

(2) A married woman who is not lawfully separated from her husband may not adopt a child without his consent, if he is capable of giving his consent.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-115. Who may adopt -- Adoption of minor -- Adoption of adult.**

(1) For purposes of this section, "vulnerable adult" means:

(a) a person 65 years of age or older; or

(b) an adult, 18 years of age or older, who has a mental or physical impairment which substantially affects that person's ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or medical or other health care;

(iii) obtain services necessary for health, safety, or welfare;

- (iv) carry out the activities of daily living;
- (v) manage the adult's own resources; or
- (vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(2) Subject to this section and Section 78B-6-117, any adult may be adopted by another adult.

(3) The following provisions of this part apply to the adoption of an adult just as though the person being adopted were a minor:

- (a) (i) Section 78B-6-108;
- (ii) Section 78B-6-114;
- (iii) Section 78B-6-116;
- (iv) Section 78B-6-118;
- (v) Section 78B-6-124;
- (vi) Section 78B-6-136;
- (vii) Section 78B-6-137;
- (viii) Section 78B-6-138;
- (ix) Section 78B-6-139;
- (x) Section 78B-6-141; and
- (xi) Section 78B-6-142;

(b) Subsections 78B-6-105(1)(a), (1)(b)(i), (1)(b)(ii), (2), and (7), except that the juvenile court does not have jurisdiction over a proceeding for adoption of an adult, unless the adoption arises from a case where the juvenile court has continuing jurisdiction over the adult adoptee; and

(c) if the adult adoptee is a vulnerable adult, Sections 78B-6-128 through 78B-6-131, regardless of whether the adult adoptee resides, or will reside, with the adoptors, unless the court, based on a finding of good cause, waives the requirements of those sections.

(4) Before a court enters a final decree of adoption of an adult, the adoptee and the prospective adoptive parent or parents shall appear before the court presiding over the adoption proceedings and execute consent to the adoption.

(5) No provision of this part, other than those listed or described in this section or Section 78B-6-117, apply to the adoption of an adult.

Amended by Chapter 340, 2012 General Session

**78B-6-116. Notice and consent for adoption of an adult.**

(1) (a) Consent to the adoption of an adult is required from:

- (i) the adult adoptee;
- (ii) any person who is adopting the adult;
- (iii) the spouse of a person adopting the adult; and
- (iv) any legally appointed guardian or custodian of the adult adoptee.

(b) No person, other than a person described in Subsection (1)(a), may consent, or withhold consent, to the adoption of an adult.

(2) (a) Except as provided in Subsection (2)(b), notice of a proceeding for the adoption of an adult shall be served on each person described in Subsection (1)(a) and the spouse of the adoptee.

(b) The notice described in Subsection (2)(a) may be waived, in writing, by the person entitled to receive notice.

(3) The notice described in Subsection (2):

(a) shall be served at least 30 days before the day on which the adoption is finalized;

(b) shall specifically state that the person served must respond to the petition within 30 days of service if the person intends to intervene in the adoption proceeding;

(c) shall state the name of the person to be adopted;

(d) may not state the name of a person adopting the adoptee, unless the person consents, in writing, to disclosure of the person's name;

(e) with regard to a person described in Subsection (1)(a):

(i) except as provided in Subsection (2)(b), shall be in accordance with the provisions of the Utah Rules of Civil Procedure; and

(ii) may not be made by publication; and

(f) with regard to the spouse of the adoptee, may be made:

(i) in accordance with the provisions of the Utah Rules of Civil Procedure;

(ii) by certified mail, return receipt requested; or

(iii) by publication, posting, or other means if:

(A) the service described in Subsection (3)(f)(ii) cannot be completed after two attempts; and

(B) the court issues an order providing for service by publication, posting, or other means.

(4) Proof of service of the notice on each person to whom notice is required by this section shall be filed with the court before the adoption is finalized.

(5) (a) Any person who is served with notice of a proceeding for the adoption of an adult and who wishes to intervene in the adoption shall file a motion in the adoption proceeding:

(i) within 30 days after the day on which the person is served with notice of the adoption proceeding;

(ii) that sets forth the specific relief sought; and

(iii) that is accompanied by a memorandum specifying the factual and legal grounds upon which the motion is made.

(b) A person who fails to file the motion described in Subsection (5)(a) within the time described in Subsection (5)(a)(i):

(i) waives any right to further notice of the adoption proceeding; and

(ii) is barred from intervening in, or bringing or maintaining any action challenging, the adoption proceeding.

(6) Except as provided in Subsection (7), after a court enters a final decree of adoption of an adult, the adult adoptee shall:

(a) serve notice of the finalization of the adoption, pursuant to the Utah Rules of Civil Procedure, on each person who was a legal parent of the adult adoptee before the final decree of adoption described in this Subsection (6) was entered; and

(b) file with the court proof of service of the notice described in Subsection (6)(a).

(7) A court may, based on a finding of good cause, waive the notification requirement described in Subsection (6).

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-117. Who may adopt -- Adoption of minor.**

(1) A minor child may be adopted by an adult person, in accordance with the provisions and requirements of this section and this part.

(2) A child may be adopted by:

(a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or

(b) subject to Subsection (4), any single adult, except as provided in Subsection (3).

(3) A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state.

(4) In order to provide a child who is in the custody of the division with the most beneficial family structure, when a child in the custody of the division is placed for adoption, the division or child-placing agency shall place the child with a man and a woman who are married to each other, unless:

(a) there are no qualified married couples who:

(i) have applied to adopt a child;

(ii) are willing to adopt the child; and

(iii) are an appropriate placement for the child;

(b) the child is placed with a relative of the child;

(c) the child is placed with a person who has already developed a substantial relationship with the child;

(d) the child is placed with a person who:

(i) is selected by a parent or former parent of the child, if the parent or former parent consented to the adoption of the child; and

(ii) the parent or former parent described in Subsection (4)(d)(i):

(A) knew the person with whom the child is placed before the parent consented to the adoption; or

(B) became aware of the person with whom the child is placed through a source other than the division or the child-placing agency that assists with the adoption of the child; or

(e) it is in the best interests of the child to place the child with a single person.

Enacted by Chapter 3, 2008 General Session

**78B-6-118. Relative ages.**

A person adopting a child must be at least 10 years older than the child adopted, unless the petitioners for adoption are a married couple, one of which is at least 10 years older than the child.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-119. Counseling for parents.**

(1) Subject to Subsection (2)(a), before relinquishing a child to a child-placing

agency, or consenting to the adoption of a child, a parent of the child has the right to participate in counseling:

(a) by a licensed counselor or an adoption service provider selected by the parent participating in the counseling;

(b) for up to three sessions of at least 50 minutes per session; and

(c) subject to Subsection (2)(b), at the expense of the:

(i) child-placing agency; or

(ii) prospective adoptive parents.

(2) (a) Notwithstanding Subsection (1), a parent who has the right to participate in the counseling described in this section may waive that right.

(b) Notwithstanding Subsection (1)(c), the total amount required to be paid by a child-placing agency or the prospective adoptive parents for the counseling described in Subsection (1) may not exceed \$400, unless an agreement for a greater amount is signed by:

(i) the parent who receives the counseling; and

(ii) the child-placing agency or prospective adoptive parents.

(3) Before a parent relinquishes a child to a child-placing agency, or consents to the adoption of a child, the parent shall be informed of the right described in Subsection (1) by the:

(a) child-placing agency;

(b) prospective adoptive parents; or

(c) representative of a person described in Subsection (3)(a) or (b).

(4) (a) Subject to Subsections (4)(b) and (c), before the day on which a final decree of adoption is entered, a statement shall be filed with the court that:

(i) is signed by each parent who:

(A) relinquishes the parent's parental rights; or

(B) consents to the adoption; and

(ii) states that, before the parent took the action described in Subsection (4)(a)(i)(A) or (B), the parent was advised of the parent's right to participate in the counseling described in this section at the expense of the:

(A) child-placing agency; or

(B) prospective adoptive parents.

(b) The statement described in Subsection (4)(a) may be included in the document that:

(i) relinquishes the parent's parental rights; or

(ii) consents to the adoption.

(c) Failure by a person to give the notice described in Subsection (3), or pay for the counseling described in this section:

(i) shall not constitute grounds for invalidating a:

(A) relinquishment of parental rights; or

(B) consent to adoption; and

(ii) shall give rise to a cause of action for the recovery of damages suffered, if any, by the parent or guardian who took the action described in Subsection (4)(c)(i)(A) or (B) against the person required to:

(A) give the notice described in Subsection (3); or

(B) pay for the counseling described in this section.

Amended by Chapter 159, 2009 General Session

**78B-6-120. Necessary consent to adoption or relinquishment for adoption.**

(1) Except as provided in Subsection (2), consent to adoption of a child, or relinquishment of a child for adoption, is required from:

(a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not have the mental capacity to consent;

(b) a man who:

(i) by operation of law under Section 78B-15-204, is recognized as the father of the proposed adoptee, unless:

(A) the presumption is rebutted under Section 78B-15-607; or

(B) the man was not married to the mother of the proposed adoptee until after the mother consented to adoption, or relinquishment for adoption, of the proposed adoptee; or

(ii) is the father of the adoptee by a previous legal adoption;

(c) the mother of the adoptee;

(d) a biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(e) consistent with Subsection (3), a biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(f) an unmarried biological father, of an adoptee, whose consent is not required under Subsection (1)(d) or (1)(e), only if he fully and strictly complies with the requirements of Sections 78B-6-121 and 78B-6-122; and

(g) the person or agency to whom an adoptee has been relinquished and that is placing the child for adoption.

(2) (a) The consent of a person described in Subsections (1)(b) through (g) is not required if the adoptee is 18 years of age or older.

(b) The consent of a person described in Subsections (1)(b) through (f) is not required if the person's parental rights relating to the adoptee have been terminated.

(3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered filed when it is entered into a database that:

(a) can be accessed by the Department of Health; and

(b) is designated by the state registrar of vital statistics as the official database for voluntary declarations of paternity.

Amended by Chapter 458, 2013 General Session

**78B-6-120.1. Implied consent.**

(1) (a) As used in this section, "abandonment" means failure of a father, with reasonable knowledge of the pregnancy, to offer and provide financial and emotional support to the birth mother for a period of six months before the day on which the

adoptee is born.

(b) A court may not determine that a father abandoned the birth mother if the father failed to provide financial or emotional support because the birth mother refused to accept support.

(2) (a) As used in this section, "emotional support" means a pattern of statements or actions that indicate to a reasonable person that a father intends to provide for the physical and emotional well-being of an unborn child.

(b) A court may not find that a father failed to provide emotional support if the father's failure was due to impossibility of performance.

(3) Consent or relinquishment, as required by Subsection 78B-6-120(1), may be implied by any of the following acts:

(a) abandonment;

(b) leaving the adoptee with a third party, without providing the third party with the parent's identification, for 30 consecutive days;

(c) knowingly leaving the adoptee with another person, without providing for support, communicating, or otherwise maintaining a substantial relationship with the adoptee, for six consecutive months; or

(d) receiving notification of a pending adoption proceeding under Subsection 78B-6-110(6) or of a termination proceeding under Section 78B-6-112 and failing to respond as required.

(4) Implied consent under Subsection (3)(a) may not be withdrawn.

(5) Nothing in this section negates the requirements of Section 78B-6-121 or 78B-6-122 for an unmarried biological father.

Enacted by Chapter 458, 2013 General Session

**78B-6-121. Consent of unmarried biological father.**

(1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to Subsections (5) and (6), with regard to a child who is placed with prospective adoptive parents more than six months after birth, consent of an unmarried biological father is not required unless the unmarried biological father:

(a) (i) developed a substantial relationship with the child by:

(A) visiting the child monthly, unless the unmarried biological father was physically or financially unable to visit the child on a monthly basis; or

(B) engaging in regular communication with the child or with the person or authorized agency that has lawful custody of the child;

(ii) took some measure of responsibility for the child and the child's future; and

(iii) demonstrated a full commitment to the responsibilities of parenthood by financial support of the child of a fair and reasonable sum in accordance with the father's ability; or

(b) (i) openly lived with the child:

(A) (I) for a period of at least six months during the one-year period immediately preceding the day on which the child is placed with prospective adoptive parents; or

(II) if the child is less than one year old, for a period of at least six months during the period of time beginning on the day on which the child is born and ending on the day on which the child is placed with prospective adoptive parents; and

(B) immediately preceding placement of the child with prospective adoptive parents; and

(ii) openly held himself out to be the father of the child during the six-month period described in Subsection (1)(b)(i)(A).

(2) (a) If an unmarried biological father was prevented from complying with a requirement of Subsection (1) by the person or authorized agency having lawful custody of the child, the unmarried biological father is not required to comply with that requirement.

(b) The subjective intent of an unmarried biological father, whether expressed or otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been met, shall not preclude a determination that the father failed to meet the requirements of Subsection (1).

(3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is six months of age or less at the time the child is placed with prospective adoptive parents, consent of an unmarried biological father is not required unless, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, the unmarried biological father:

(a) initiates proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act;

(b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

(i) stating that he is fully able and willing to have full custody of the child;

(ii) setting forth his plans for care of the child; and

(iii) agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(c) consistent with Subsection (4), files notice of the commencement of paternity proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and

(d) offered to pay and paid, during the pregnancy and after the child's birth, a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless:

(i) he did not have actual knowledge of the pregnancy;

(ii) he was prevented from paying the expenses by the person or authorized agency having lawful custody of the child; or

(iii) the mother refuses to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)(d).

(4) The notice described in Subsection (3)(c) is considered filed when received by the state registrar of vital statistics.

(5) Unless his ability to assert the right to consent has been lost for failure to comply with Section 78B-6-110.1, or lost under another provision of Utah law, an unmarried biological father shall have at least one business day after the child's birth to fully and strictly comply with the requirements of Subsection (3).

(6) Consent of an unmarried biological father is not required under this section if:

(a) the court determines, in accordance with the requirements and procedures of

Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological father's rights should be terminated, based on the petition of any interested party;

(b) (i) a declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded under Section 78B-15-306; and

(ii) the unmarried biological father fails to comply with Subsection (3) within 10 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78B-15-306; or

(c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to preserve his rights in accordance with the requirements of that section.

(7) Unless the adoptee is conceived or born within a marriage, the petitioner in an adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating:

(a) that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (3)(c); and

(b) (i) that no filing has been found pertaining to the father of the child in question; or

(ii) if a filing is found, the name of the putative father and the time and date of filing.

Amended by Chapter 278, 2013 General Session

Amended by Chapter 458, 2013 General Session

#### **78B-6-122. Qualifying circumstance.**

(1) (a) For purposes of this section, "qualifying circumstance" means that, at any point during the time period beginning at the conception of the child and ending at the time the mother executed a consent to adoption or relinquishment of the child for adoption:

(i) the child or the child's mother resided on a permanent basis, or a temporary basis of no less than 30 consecutive days, in the state;

(ii) the mother intended to give birth to the child in the state;

(iii) the child was born in the state; or

(iv) the mother intended to execute a consent to adoption or relinquishment of the child for adoption:

(A) in the state; or

(B) under the laws of the state.

(b) For purposes of Subsection (1)(c)(i)(C) only, when determining whether an unmarried biological father has demonstrated a full commitment to his parental responsibilities, a court shall consider the totality of the circumstances, including, if applicable:

(i) efforts he has taken to discover the location of the child or the child's mother;

(ii) whether he has expressed or demonstrated an interest in taking responsibility for the child;

(iii) whether, and to what extent, he has developed, or attempted to develop, a

relationship with the child;

(iv) whether he offered to provide and, if the offer was accepted, did provide, financial support for the child or the child's mother;

(v) whether, and to what extent, he has communicated, or attempted to communicate, with the child or the child's mother;

(vi) whether he has filed legal proceedings to establish his paternity of, and take responsibility for, the child;

(vii) whether he has filed a notice with a public official or agency relating to:

(A) his paternity of the child; or

(B) legal proceedings to establish his paternity of the child; or

(viii) other evidence that demonstrates that he has demonstrated a full commitment to his parental responsibilities.

(c) Notwithstanding the provisions of Section 78B-6-121, the consent of an unmarried biological father is required with respect to an adoptee who is under the age of 18 if:

(i) (A) the unmarried biological father did not know, and through the exercise of reasonable diligence could not have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;

(B) before the mother executed a consent to adoption or relinquishment of the child for adoption, the unmarried biological father fully complied with the requirements to establish parental rights in the child, and to preserve the right to notice of a proceeding in connection with the adoption of the child, imposed by:

(I) the last state where the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that the mother resided in before the mother executed the consent to adoption or relinquishment of the child for adoption; or

(II) the state where the child was conceived; and

(C) the unmarried biological father has demonstrated, based on the totality of the circumstances, a full commitment to his parental responsibilities, as described in Subsection (1)(b); or

(ii) (A) the unmarried biological father knew, or through the exercise of reasonable diligence should have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed; and

(B) the unmarried biological father complied with the requirements of Section 78B-6-121 before the later of:

(I) 20 days after the day that the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that a qualifying circumstance existed; or

(II) the time that the mother executed a consent to adoption or relinquishment of the child for adoption.

(2) An unmarried biological father who does not fully and strictly comply with the requirements of Section 78B-6-121 and this section is considered to have waived and surrendered any right in relation to the child, including the right to:

(a) notice of any judicial proceeding in connection with the adoption of the child;

and

- (b) consent, or refuse to consent, to the adoption of the child.

Amended by Chapter 474, 2013 General Session

**78B-6-122.5. Effect of out-of-state paternity adjudication, declaration, or acknowledgment.**

Unless a person who is an unmarried biological father has fully and strictly complied with the requirements of Sections 78B-6-120 through 78B-6-122, an out-of-state order that adjudicates paternity, or an out-of-state declaration or acknowledgment of paternity:

- (1) only has the effect of establishing that the person is an unmarried biological father of the child to whom the order, declaration, or acknowledgment relates; and
- (2) does not entitle the person to:
  - (a) notice of any judicial proceeding related to the adoption of the child;
  - (b) the right to consent, or refuse to consent, to the adoption of the child; or
  - (c) the right to custody of, control over, or visitation with the child.

Enacted by Chapter 237, 2010 General Session

**78B-6-123. Power of a minor to consent or relinquish.**

- (1) A minor parent has the power to:
  - (a) consent to the adoption of the minor's child; and
  - (b) relinquish the minor's control or custody of the child for adoption.
- (2) The consent or relinquishment described in Subsection (1) is valid and has the same force and effect as a consent or relinquishment executed by an adult parent.
- (3) A minor parent, having executed a consent or relinquishment, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-124. Persons who may take consents and relinquishments.**

- (1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:
  - (a) a judge of any court that has jurisdiction over adoption proceedings;
  - (b) subject to Subsection (6), a person appointed by the judge described in Subsection (1)(a) to take consents or relinquishments; or
  - (c) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency.
- (2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall be signed before:
  - (a) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional

child-placing agency;

(b) subject to Subsection (6), a person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings;

(c) a court that has jurisdiction over adoption proceedings in the state where the consent or relinquishment is taken; or

(d) a person authorized, under the laws of the state where the consent or relinquishment is taken, to take consents or relinquishments of a birth mother or adoptee.

(3) The consent or relinquishment of any other person or agency as required by Section 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or relinquishment under Subsection (1) or (2).

(4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments, shall certify to the best of his information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.

(5) A person executing a consent or relinquishment is entitled to receive a copy of the consent or relinquishment.

(6) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:

(a) notarized; or

(b) witnessed by two individuals who are not members of the birth mother's or the signatory's immediate family.

Renumbered and Amended by Chapter 3, 2008 General Session

Amended by Chapter 137, 2008 General Session

**78B-6-125. Time period prior to birth mother's consent.**

(1) A birth mother may not consent to the adoption of her child or relinquish control or custody of her child until at least 24 hours after the birth of her child.

(2) The consent or relinquishment of any other person as required by Sections 78B-6-120 and 78B-6-121 may be executed at any time, including prior to the birth of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-126. When consent or relinquishment effective.**

A consent or relinquishment is effective when it is signed and may not be revoked.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-127. Parents whose rights have been terminated.**

Neither notice nor consent to adoption or relinquishment for adoption is required from a parent whose rights with regard to an adoptee have been terminated by a court.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-128. Preplacement adoptive evaluations -- Exceptions.**

(1) (a) Except as otherwise provided in this section, a child may not be placed in an adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive parent and the prospective adoptive home, has been conducted in accordance with the requirements of this section.

(b) Except as provided in Section 78B-6-131, the court may, at any time, authorize temporary placement of a child in a potential adoptive home pending completion of a preplacement adoptive evaluation described in this section.

(c) Subsection (1)(a) does not apply if a pre-existing parent has legal custody of the child to be adopted and the prospective adoptive parent is related to that child or the pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the evaluation is otherwise requested by the court. The prospective adoptive parent described in this Subsection (1)(c) shall obtain the information described in Subsections (2)(a) and (b), and file that documentation with the court prior to finalization of the adoption.

(d) The required preplacement adoptive evaluation must be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent. If the prospective adoptive parent has previously received custody of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent and after the placement of the previous child with the prospective adoptive parent.

(2) The preplacement adoptive evaluation shall include:

(a) criminal history record information regarding each prospective adoptive parent and any other adult living in the prospective home, prepared no earlier than 18 months immediately preceding placement of the child in accordance with the following:

(i) if the child is in state custody, each prospective adoptive parent and any other adult living in the prospective home shall:

(A) submit fingerprints for a Federal Bureau of Investigation national criminal history record check through the Criminal and Technical Services Division of the Department of Public Safety in accordance with the provisions of Section 62A-2-120; or

(B) submit to a fingerprint based Federal Bureau of Investigation national criminal history record check through a law enforcement agency in another state, district, or territory of the United States; or

(ii) subject to Subsection (3), if the child is not in state custody, each prospective adoptive parent and any other adult living in the prospective home shall:

(A) submit fingerprints for a Federal Bureau of Investigation national criminal history records check as a personal records check; or

(B) complete a criminal records check, if available, for each state and country where the prospective adoptive parent and any adult living in the prospective adoptive home resided during the five years immediately preceding the day on which the adoption petition is to be finalized;

(b) a report containing all information regarding reports and investigations of child abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other adult living in the prospective home, obtained no earlier than 18 months immediately preceding the day on which the child is placed in the prospective home,

pursuant to waivers executed by each prospective adoptive parent and any other adult living in the prospective home, that:

(i) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is a resident of Utah, is prepared by the Department of Human Services from the records of the Department of Human Services; or

(ii) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is not a resident of Utah, prepared by the Department of Human Services, or a similar agency in another state, district, or territory of the United States, where each prospective adoptive parent and any other adult living in the prospective home resided in the five years immediately preceding the day on which the child is placed in the prospective adoptive home;

(c) in accordance with Subsection (6), an evaluation conducted by:

(i) an expert in family relations approved by the court;

(ii) a certified social worker;

(iii) a clinical social worker;

(iv) a marriage and family therapist;

(v) a psychologist;

(vi) a social service worker, if supervised by a certified or clinical social worker;

or

(vii) a professional counselor; and

(d) in accordance with Subsection (7), if the child to be adopted is a child who is in the custody of any public child welfare agency, and is a child who has a special need as defined in Section 62A-4a-902, the preplacement evaluation shall be conducted by the Department of Human Services or a child-placing agency that has entered into a contract with the department to conduct the preplacement evaluations for children with special needs.

(3) For purposes of Subsection (2)(a)(ii):

(a) if the adoption is being handled by a human services program, as defined in Section 62A-2-101:

(i) the criminal history check described in Subsection (2)(a)(ii)(A) shall be submitted through the Criminal Investigations and Technical Services Division of the Department of Public Safety, in accordance with the provisions of Section 62A-2-120; and

(ii) subject to Subsection (4), the criminal history check described in Subsection (2)(a)(ii)(B) shall be submitted in a manner acceptable to the court that will:

(A) preserve the chain of custody of the results; and

(B) not permit tampering with the results by a prospective adoptive parent or other interested party; and

(b) if the adoption is being handled by a private attorney, and not a human services program, the criminal history checks described in Subsection (2)(a)(ii) shall be:

(i) submitted in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety; or

(ii) subject to Subsection (4), submitted in a manner acceptable to the court that will:

(A) preserve the chain of custody of the results; and

(B) not permit tampering with the results by a prospective adoptive parent or

other interested party.

(4) In order to comply with Subsection (3)(a)(ii) or (b)(ii), the manner in which the criminal history check is submitted shall be approved by the court.

(5) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of Human Services shall comply with Section 78B-6-131.

(6) (a) A person described in Subsection (2)(c) shall be licensed to practice under the laws of:

- (i) this state; or
- (ii) the state, district, or territory of the United States where the prospective adoptive parent or other person living in the prospective adoptive home resides.

(b) The evaluation described in Subsection (2)(c) shall be in a form approved by the Department of Human Services.

(c) Neither the Department of Human Services nor any of its divisions may proscribe who qualifies as an expert in family relations or who may conduct evaluations under Subsection (2)(c).

(7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the responsibility of the adopting parent or parents.

(8) The person or agency conducting the preplacement adoptive evaluation shall, in connection with the evaluation, provide the prospective adoptive parent or parents with literature approved by the Division of Child and Family Services relating to adoption, including information relating to:

- (a) the adoption process;
- (b) developmental issues that may require early intervention; and
- (c) community resources that are available to the prospective adoptive parent or parents.

(9) A copy of the preplacement adoptive evaluation shall be filed with the court.

Amended by Chapter 458, 2013 General Session

**78B-6-129. Postplacement adoptive evaluations.**

(1) Except as provided in Subsections (2) and (3), a postplacement evaluation shall be conducted and submitted to the court prior to the final hearing in an adoption proceeding. The postplacement evaluation shall include:

- (a) verification of the allegations of fact contained in the petition for adoption;
  - (b) an evaluation of the progress of the child's placement in the adoptive home;
- and
- (c) a recommendation regarding whether the adoption is in the best interest of the child.

(2) The exemptions from and requirements for evaluations, described in Subsections 78B-6-128(1)(c), (2)(c), (6), and (8), also apply to postplacement adoptive evaluations.

(3) Upon the request of the petitioner, the court may waive the postplacement adoptive evaluation, unless it determines that it is in the best interest of the child to require the postplacement evaluation.

Amended by Chapter 340, 2012 General Session

**78B-6-130. Preplacement and postplacement adoptive studies -- Review by court.**

(1) If the person or agency conducting the evaluation disapproves the adoptive placement, either in the preplacement or postplacement adoptive evaluation, the court may dismiss the petition. However, upon request of a prospective adoptive parent, the court shall order that an additional preplacement or postplacement adoptive evaluation be conducted, and hold a hearing on the suitability of the adoption, including testimony of interested parties.

(2) Prior to finalization of a petition for adoption the court shall review and consider the information and recommendations contained in the preplacement and postplacement adoptive studies required by Sections 78B-6-128 and 78B-6-129.

Enacted by Chapter 3, 2008 General Session

**78B-6-131. Child in custody of state -- Placement.**

(1) Notwithstanding Sections 78B-6-128 through 78B-6-130, and except as provided in Subsection (2), a child who is in the legal custody of the state may not be placed with a prospective foster parent or a prospective adoptive parent, unless, before the child is placed with the prospective foster parent or the prospective adoptive parent:

(a) a fingerprint based FBI national criminal history records check is conducted on the prospective foster parent, prospective adoptive parent, and any other adult residing in the household;

(b) the Department of Human Services conducts a check of the child abuse and neglect registry in each state where the prospective foster parent or prospective adoptive parent resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect;

(c) the Department of Human Services conducts a check of the child abuse and neglect registry of each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (1)(b) resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(d) each person required to undergo a background check described in this section passes the background check, pursuant to the provisions of Section 62A-2-120.

(2) The requirements under Subsection (1) do not apply to the extent that:

(a) federal law or rule permits otherwise; or

(b) the requirements would prohibit the division or a court from placing a child with:

(i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or

78A-6-307.5; or

(ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsection (1).

Amended by Chapter 293, 2012 General Session

**78B-6-132. Children in the custody of the Division of Child and Family Services -- Consideration of child's relationship with foster parents who petition for adoption.**

(1) In assessing the best interest of a child in the custody of the Division of Child and Family Services whose foster parents have petitioned for adoption, the court shall give special consideration to the relationship of the child with his foster parents, if the child has been in that home for a period of six months or longer.

(2) Nothing in this section shall be construed as requiring an adoption that would be contrary to the public policy of placing an adoptable child with a married couple whenever possible.

Amended by Chapter 281, 2012 General Session

**78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.**

(1) If a person whose consent for an adoption is required pursuant to Subsection 78B-6-120(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether proper grounds exist for the termination of that person's rights pursuant to the provisions of this chapter or Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

(2) (a) If there are proper grounds to terminate the person's parental rights, the court shall order that the person's rights be terminated.

(b) If there are not proper grounds to terminate the person's parental rights, the court shall:

(i) dismiss the adoption petition;  
(ii) conduct an evidentiary hearing to determine who should have custody of the child; and

(iii) award custody of the child in accordance with the child's best interest.

(3) Evidence considered at the custody hearing may include:

(a) evidence of psychological or emotional bonds that the child has formed with a third person, including the prospective adoptive parent; and

(b) any detriment that a change in custody may cause the child.

(4) If the court dismisses the adoption petition, the fact that a person relinquished a child for adoption or consented to the adoption may not be considered as evidence in a custody proceeding described in this section, or in any subsequent custody proceeding, that it is not in the child's best interest for custody to be awarded to such person or that:

(a) the person is unfit or incompetent to be a parent;

(b) the person has neglected or abandoned the child;

(c) the person is not interested in having custody of the child; or

- (d) the person has forfeited the person's parental presumption.
- (5) Any custody order entered pursuant to this section may also:
  - (a) include provisions for:
    - (i) parent-time; or
    - (ii) visitation by an interested third party; and
  - (b) provide for the financial support of the child.
- (6) (a) If a person or entity whose consent is required for an adoption under Subsection 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2).
- (b) The court may also finalize the adoption if doing so is in the best interest of the child.
- (7) (a) A person may not contest an adoption after the final decree of adoption is entered, if that person:
  - (i) was a party to the adoption proceeding;
  - (ii) was served with notice of the adoption proceeding; or
  - (iii) executed a consent to the adoption or relinquishment for adoption.
- (b) No person may contest an adoption after one year from the day on which the final decree of adoption is entered.
- (c) The limitations on contesting an adoption action, described in this Subsection (7), apply to all attempts to contest an adoption:
  - (i) regardless of whether the adoption is contested directly or collaterally; and
  - (ii) regardless of the basis for contesting the adoption, including claims of fraud, duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of jurisdiction.
- (d) The limitations on contesting an adoption action, described in this Subsection (7), do not prohibit a timely appeal of:
  - (i) a final decree of adoption; or
  - (ii) a decision in an action challenging an adoption, if the action was brought within the time limitations described in Subsections (7)(a) and (b).

Amended by Chapter 237, 2010 General Session

**78B-6-134. Custody pending final decree.**

- (1) (a) A licensed child placing adoption agency, or a petitioner if the petition for adoption is filed before a child's birth, may seek an order establishing that the agency or petitioner shall have temporary custody of the child from the time of birth.
- (b) The court shall grant an order for temporary custody under Subsection (1)(a) upon determining that:
  - (i) the birth mother or both birth parents consent to the order;
  - (ii) the agency or petitioner is willing and able to take custody of the child; and
  - (iii) an order will be in the best interest of the child.
- (c) The court shall vacate an order if, prior to the child's birth, the birth mother or birth parents withdraw their consent.
- (2) Except as otherwise provided by the court, once a petitioner has received the adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the custody and control of the adoptee and is responsible for the care,

maintenance, and support of the adoptee, including any necessary medical or surgical treatment, pending further order of the court.

(3) Once a child has been placed with, relinquished to, or ordered into the custody of a child-placing agency for purposes of adoption, the agency shall have custody and control of the child and is responsible for his care, maintenance, and support. The agency may delegate the responsibility for care, maintenance, and support, including any necessary medical or surgical treatment, to the petitioner once the petitioner has received the child into his home. However, until the final decree of adoption is entered by the court, the agency has the right to the custody and control of the child.

Amended by Chapter 458, 2013 General Session

**78B-6-135. Division of Child and Family Services -- Duties -- Report -- Fee.**

(1) At the request of the court, the division, through its field agents, persons licensed by the division for the care and placement of children, or through the probation officer of the juvenile court or court of like jurisdiction of the county, under the division's supervision, shall:

- (a) verify the allegations of the petition for adoption of a minor child;
- (b) make a thorough investigation of the matter; and
- (c) report the division's findings in writing to the court.

(2) (a) When the court requests an investigation under Subsection (1), the court shall serve a copy of the petition, together with a statement containing the names and addresses of the child and petitioners, on the division by certified mail.

(b) The division, or the person appointed by the division, shall complete the investigation described in Subsection (2)(a) and submit a written report to the court within 60 days after the day that the petition is served on the division.

(3) (a) The division shall charge the petitioner a reasonable fee for the services provided under this section.

(b) Fees collected shall be deposited in the General Fund.

(4) The written report submitted to the court under this section shall state:

(a) why the pre-existing parents, if living, desire to be released from the care, support, and guardianship of the child;

(b) whether the pre-existing parents have abandoned the child or are unfit for custody;

(c) whether the prospective adoptive parent or parents are financially able and morally fit to have the care, supervision, and training of the child;

(d) the physical and mental condition of the child, so far as that may be determined; and

(e) any other facts and circumstances pertaining to the child and the child's welfare.

(5) (a) The court shall conduct a full hearing on the petition for adoption and examine the parties in interest under oath.

(b) The court may adjourn the hearing from time to time as the nature of the case requires.

(6) If the report submitted by the division under Subsection (2) disapproves of

the adoption of the child by the petitioner, the court may dismiss the petition.

Amended by Chapter 340, 2012 General Session

**78B-6-136. Final decree of adoption -- Agreement by adoptive parent or parents.**

(1) Except as provided in Subsection (2), before the court enters a final decree of adoption:

(a) the prospective adoptive parent or parents and the child being adopted shall appear before the appropriate court; and

(b) the prospective adoptive parent or parents shall execute an agreement stating that the child shall be adopted and treated in all respects as the adoptive parent's or parents' own lawful child.

(2) Except as provided in Subsection 78B-6-115(4), a court may waive the requirement described in Subsection (1)(a) if:

(a) the adoption is not contested;

(b) the prospective adoptive parent or parents:

(i) execute an agreement stating that the child shall be adopted and treated in all respects as the parent's or parents' own lawful child;

(ii) have the agreement described in Subsection (2)(b)(i) notarized; and

(iii) file the agreement described in Subsection (2)(b)(i) with the court; and

(c) all requirements of this chapter to obtain a final decree of adoption are otherwise complied with.

Amended by Chapter 340, 2012 General Session

**78B-6-136.5. Timing of entry of final decree of adoption -- Posthumous adoption.**

(1) Except as provided in Subsection (2), a final decree of adoption may not be entered until the earlier of:

(a) when the child has lived in the home of the prospective adoptive parent for six months; or

(b) when the child has been placed for adoption with the prospective adoptive parent for six months.

(2) (a) If the prospective adoptive parent is the spouse of the pre-existing parent, a final decree of adoption may not be entered until the child has lived in the home of that prospective adoptive parent for one year, unless, based on a finding of good cause, the court orders that the final decree of adoption may be entered at an earlier time.

(b) The court may, based on a finding of good cause, order that the final decree of adoption be entered at an earlier time than described in Subsection (1).

(3) If the child dies during the time that the child is placed in the home of a prospective adoptive parent or parents for the purpose of adoption, the court has authority to enter a final decree of adoption after the child's death upon the request of the prospective adoptive parents.

(4) The court may enter a final decree of adoption declaring that a child is

adopted by both a deceased and a surviving adoptive parent if, after the child is placed in the home of the child's prospective adoptive parents:

- (a) one of the prospective adoptive parents dies;
- (b) the surviving prospective adoptive parent requests that the court enter the decree; and

- (c) the decree is entered after the child has lived in the home of the surviving prospective adoptive parent for at least six months.

(5) Upon request of a surviving pre-existing parent, or a surviving parent for whom adoption of a child has been finalized, the court may enter a final decree of adoption declaring that a child is adopted by a deceased adoptive parent who was the spouse of the surviving parent at the time of the prospective adoptive parent's death.

(6) The court may enter a final decree of adoption declaring that a child is adopted by both deceased prospective adoptive parents if:

- (a) both of the prospective adoptive parents die after the child is placed in the prospective adoptive parents' home; and

- (b) it is in the best interests of the child to enter the decree.

(7) Nothing in this section shall be construed to grant any rights to the pre-existing parents of a child to assert any interest in the child during the six-month or one-year periods described in this section.

Amended by Chapter 340, 2012 General Session

**78B-6-137. Decree of adoption -- Best interest of child -- Legislative findings.**

The court shall examine each person appearing before it in accordance with this chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption, it shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the child of the adoptive parent or parents.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-138. Pre-existing parent's rights and duties dissolved.**

(1) A pre-existing parent of an adopted child is released from all parental duties toward and all responsibilities for the adopted child, including residual rights, and has no further rights with regard to that child at the earlier of:

- (a) the time the pre-existing parent's parental rights are terminated; or

- (b) except as provided in Subsection (2), and subject to Subsection (3), the time the final decree of adoption is entered.

(2) The rights and duties of a pre-existing parent described in Subsection (1) who, at the time the child is adopted, is lawfully married to the person adopting the child are not released or terminated under Subsection (1)(b).

(3) The rights and duties of a pre-existing parent described in Subsection (1) who, at the time the child is adopted, is not lawfully married to the person adopting the child are terminated as provided in Subsection (1)(b).

Amended by Chapter 237, 2010 General Session

**78B-6-139. Name and status of adopted child.**

When a final decree of adoption is entered under Section 78B-6-137, a child may take the family name of the adoptive parent or parents. After that decree of adoption is entered, the adoptive parent or parents and the child shall sustain the legal relationship of parent and child, and have all the rights and be subject to all the duties of that relationship.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-140. Itemization of fees and expenses.**

(1) Except as provided in Subsection (4), prior to the date that a final decree of adoption is entered, an affidavit regarding fees and expenses, signed by the prospective adoptive parent or parents and the person or agency placing the child, shall be filed with the court.

(2) The affidavit described in Subsection (1) shall itemize the following items in connection with the adoption:

(a) all legal expenses, maternity expenses, medical or hospital expenses, and living expenses that have been or will be paid to or on behalf of the pre-existing parents of the child, including the source of payment;

(b) fees paid by the prospective adoptive parent or parents in connection with the adoption;

(c) all gifts, property, or other items that have been or will be provided to the pre-existing parents, including the source of the gifts, property, or other items;

(d) all public funds used for any medical or hospital costs in connection with the:

(i) pregnancy;

(ii) delivery of the child; or

(iii) care of the child;

(e) the state of residence of the:

(i) birth mother or the pre-existing parents; and

(ii) prospective adoptive parent or parents;

(f) a description of services provided to the prospective adoptive parents or pre-existing parents in connection with the adoption; and

(g) that Section 76-7-203 has not been violated.

(3) A copy of the affidavit described in Subsection (1) shall be provided to the Office of Licensing within the Department of Human Services.

(4) This section does not apply if the prospective adoptive parent is the legal spouse of a pre-existing parent.

Amended by Chapter 340, 2012 General Session

**78B-6-141. Petition, report, and documents sealed -- Exceptions.**

(1) A petition for adoption, the written report described in Section 78B-6-135, and any other documents filed in connection with the petition are sealed.

(2) The documents described in Subsection (1) may only be open to inspection

as follows:

- (a) in accordance with Subsection (3)(a), by a party to the adoption proceeding:
    - (i) while the proceeding is pending; or
    - (ii) within six months after the day on which the adoption decree is entered;
  - (b) subject to Subsection (3)(b), a court enters an order permitting access to the documents by a person who has appealed the denial of that person's motion to intervene;
  - (c) upon order of the court expressly permitting inspection or copying, after good cause has been shown;
  - (d) as provided under Section 78B-6-144;
  - (e) those records shall become public on the one hundredth anniversary of the date the final decree of adoption was entered; or
  - (f) if the adoptee is an adult at the time the final decree of adoption is entered, the documents described in this section are open to inspection and copying without a court order by the adoptee or a parent who adopted the adoptee, unless the final decree of adoption is entered by the juvenile court under Subsection 78B-6-115(3)(b).
- (3) (a) A person who files a motion to intervene in an adoption proceeding:
- (i) is not a party to the adoption proceeding, unless the motion to intervene is granted; and
  - (ii) may not be granted access to the documents described in Subsection (1), unless the motion to intervene is granted.
- (b) An order described in Subsection (2)(b) shall:
- (i) prohibit the person described in Subsection (2)(b) from inspecting a document described in Subsection (1) that contains identifying information of the adoptive or prospective adoptive parent; and
  - (ii) permit the person described in Subsection (3)(b)(i) to review a copy of a document described in Subsection (3)(b)(i) after the identifying information described in Subsection (3)(b)(i) is redacted from the document.

Amended by Chapter 340, 2012 General Session

**78B-6-142. Adoption order from foreign country.**

- (1) Except as otherwise provided by federal law, an adoption order rendered to a resident of this state that is made by a foreign country shall be recognized by the courts of this state and enforced as if the order were rendered by a court in this state.
- (2) A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order meets the requirements of Subsection (1), the court shall order the state registrar to:
  - (a) file the order pursuant to Section 78B-6-137; and
  - (b) file a certificate of birth for the child pursuant to Section 26-2-28.
- (3) If a clerk of the court is unable to establish the fact, time, and place of birth from the documentation provided, a person holding a direct, tangible, and legitimate interest as described in Subsection 26-2-22(2)(a) or (b) may petition for a court order establishing the fact, time, and place of a birth pursuant to Subsection 26-2-15(1).

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-143. Nonidentifying health history of adoptee filed with office -- Limited availability.**

(1) Upon finalization of an adoption in this state, the person who proceeded on behalf of the petitioner for adoption, or a child-placing agency if an agency is involved in the adoption, shall file a report with the office, in the form established by the office. That report shall include a detailed health history, and a genetic and social history of the adoptee.

(2) The report filed under Subsection (1) may not contain any information which identifies the adoptee's birth parents or members of their families.

(3) When the report described in Subsection (1) is filed, a duplicate report shall be provided to the adoptive parents.

(4) The report filed with the office under Subsection (1) shall only be available upon request, and upon presentation of positive identification, to the following persons:

- (a) the adoptive parents;
- (b) in the event of the death of the adoptive parents, the adoptee's legal guardian;
- (c) the adoptee;
- (d) in the event of the death of the adoptee, the adoptee's spouse, if the spouse is the parent or guardian of the adoptee's child;
- (e) the adoptee's child or descendant;
- (f) the adoptee's birth parent; and
- (g) the adoptee's adult sibling.

(5) No information which identifies a birth parent or his family may be disclosed under this section.

(6) The actual cost of providing information under this section shall be paid by the person requesting the information.

Amended by Chapter 340, 2012 General Session

**78B-6-144. Mutual-consent, voluntary adoption registry -- Procedures -- Fees.**

(1) The office shall establish a mutual-consent, voluntary adoption registry.

(a) Adult adoptees and birth parents of adult adoptees, upon presentation of positive identification, may request identifying information from the office, in the form established by the office. A court of competent jurisdiction or a child-placing agency may accept that request from the adult adoptee or birth parent, in the form provided by the office, and transfer that request to the office. The adult adoptee or birth parent is responsible for notifying the office of any change in information contained in the request.

(b) The office may only release identifying information to an adult adoptee or birth parent when it receives requests from both the adoptee and the adoptee's birth parent.

(c) After matching the request of an adult adoptee with that of at least one of the adoptee's birth parents, the office shall notify both the adoptee and the birth parent that

the requests have been matched, and disclose the identifying information to those parties. However, if that adult adoptee has a sibling of the same birth parent who is under the age of 18 years, and who was raised in the same family setting as the adult adoptee, the office shall not disclose the requested identifying information to that adult adoptee or the adoptee's birth parent.

(2) (a) Adult adoptees and adult siblings of adult adoptees, upon presentation of positive identification, may request identifying information from the office, in the form established by the office. A court of competent jurisdiction or a child-placing agency may accept that request from the adult adoptee or adult sibling, in the form provided by the office, and transfer that request to the office. The adult adoptee or adult sibling is responsible for notifying the office of any change in information contained in the request.

(b) The office may only release identifying information to an adult adoptee or adult sibling when it receives requests from both the adoptee and the adoptee's adult sibling.

(c) After matching the request of an adult adoptee with that of the adoptee's adult sibling, if the office has been provided with sufficient information to make that match, the office shall notify both the adoptee and the adult sibling that the requests have been matched, and disclose the identifying information to those parties.

(3) Information registered with the bureau under this section is available only to a registered adult adoptee and the adoptee's registered birth parent or registered adult sibling, under the terms of this section.

(4) Information regarding a birth parent who has not registered a request with the bureau may not be disclosed.

(5) The bureau may charge a fee for services provided under this section, limited to the cost of providing those services.

Amended by Chapter 340, 2012 General Session

**78B-6-145. Restrictions on disclosure of information -- Violations -- Penalty.**

(1) Information maintained or filed with the office under this chapter may not be disclosed except as provided by this chapter, or pursuant to a court order.

(2) Any person who discloses information obtained from the office's voluntary adoption registry in violation of this part, or knowingly allows that information to be disclosed in violation of this chapter is guilty of a class A misdemeanor.

Amended by Chapter 340, 2012 General Session

**78B-6-146. Postadoption contact agreements.**

(1) As used in this section:

(a) "Postadoption contact agreement" means a document, agreed upon prior to the finalization of an adoption of a child in the custody of the division, that outlines the relationship between an adoptive parent, birth parent, or other birth relative, and an adopted child after the finalization of adoption.

(b) "Other birth relative" means a grandparent, stepparent, sibling, stepsibling,

aunt, or uncle of the prospective adoptive child.

(2) (a) Notwithstanding any other provision in this chapter, if a child in the custody of the division is placed for adoption, the prospective adoptive parent and birth parent, or other birth relative, may enter into a postadoption contact agreement as provided in this section.

(b) A birth parent is not required to be a party to a postadoption contact agreement in order to permit an open adoption agreement between a prospective adoptive parent and another birth relative of the child.

(3) In order to be legally enforceable, a postadoption contact agreement shall be:

(a) approved by the court before the finalization of the adoption, with the court making a specific finding that the agreement is in the best interest of the child;

(b) signed by each party claiming a right or obligation in the agreement; and

(c) if the adopted child is 12 years old or older, approved by the child.

(4) A postadoption contact agreement shall:

(a) describe:

(i) visits, if any, that shall take place between the birth parent, other birth relative, adoptive parent, and adopted child;

(ii) the degree of supervision, if any, that shall be required during a visit between a birth parent, other birth relative, and adopted child;

(iii) the information, if any, that shall be provided to a birth parent, or other birth relative, about the adopted child and how often that information shall be provided;

(iv) the grounds, if any, on which the adoptive parent may:

(A) decline to permit visits, described in Subsection (4)(a)(i), between the birth parent, or other birth relative, and adopted child; or

(B) cease providing the information described in Subsection (4)(a)(iii) to the birth parent or other birth relative; and

(b) state that following the adoption, the court shall presume that the adoptive parent's judgment about the best interest of the child is correct in any action seeking to enforce, modify, or terminate the agreement.

(5) A postadoption contact agreement may not limit the adoptive parent's ability to move out of state.

(6) A postadoption contact agreement may only be modified with the consent of the adoptive parent.

(7) In an action seeking enforcement of a postadoption contact agreement:

(a) an adoptive parent's judgment about the best interest of the child is entitled to a presumption of correctness;

(b) if the party seeking to enforce the postadoption contact agreement successfully rebuts the presumption described in Subsection (7)(a), the court shall consider whether:

(i) the parties performed the duties outlined in the open adoption agreement in good faith;

(ii) there is a reasonable alternative that fulfills the spirit of the open adoption agreement without ordering mandatory compliance with the open adoption agreement; and

(iii) enforcement of the open adoption agreement is in the best interest of the

adopted child; and

(c) the court shall order the parties to attend mediation, if the presumption in Subsection (7)(a) is successfully rebutted and mediation is in the child's best interest.

(8) An open adoption agreement that has been found not to be in the best interest of the adopted child shall not be enforced.

(9) Violation of an open adoption agreement is not grounds:

(a) to set aside an adoption; or

(b) for an award of money damages.

(10) Nothing in this section shall be construed to mean that an open adoption agreement is required before an adoption may be finalized.

(11) Refusal or failure to agree to a postadoption contact agreement is not admissible in any adoption proceeding.

(12) The court that approves a postadoption contact agreement retains jurisdiction over modification, termination, and enforcement of an approved postadoption contact agreement.

Enacted by Chapter 438, 2013 General Session

**78B-6-201. Title.**

This part is known as the "Alternative Dispute Resolution Act."

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-202. Definitions.**

As used in this part:

(1) "ADR" means alternative dispute resolution and includes arbitration, mediation, and other means of dispute resolution, other than court trial, authorized by the Judicial Council under this part.

(2) "ADR organization" means an organization which provides training for ADR providers or offers other ADR services.

(3) "ADR provider" means a neutral person who conducts an ADR procedure. An arbitrator, mediator, and early neutral evaluator are ADR providers. An ADR provider may be an employee of the court or an independent contractor.

(4) "Arbitration" means a private hearing before a neutral or panel of neutrals who hear the evidence, consider the contentions of the parties, and enter a written award to resolve the issues presented pursuant to Section 78B-6-206.

(5) "Award" as used in connection with arbitration includes monetary or equitable relief and may include damages, interest, costs, and attorney fees.

(6) "Civil action" means an action in which a party seeks monetary or equitable relief at common law or pursuant to statute.

(7) "Early neutral evaluation" means a confidential meeting with a neutral expert to identify the issues in a dispute, explore settlement, and assess the merits of the claims.

(8) "Mediation" means a private forum in which one or more impartial persons facilitate communication between parties to a civil action to promote a mutually acceptable resolution or settlement.

(9) "Summary jury trial" means a summary presentation of a case to a jury which results in a nonbinding verdict.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-203. Purpose and findings.**

(1) The purpose of this part is to offer an alternative or supplement to the formal processes associated with a court trial and to promote the efficient and effective operation of the courts of this state by authorizing and encouraging the use of alternative methods of dispute resolution to secure the just, speedy, and inexpensive determination of civil actions filed in the courts of this state.

(2) The Legislature finds that:

(a) the use of alternative methods of dispute resolution authorized by this part will secure the purposes of Article I, Section 11, Utah Constitution, by providing supplemental or complementary means for the just, speedy, and inexpensive resolution of disputes;

(b) preservation of the confidentiality of ADR procedures will significantly aid the successful resolution of civil actions in a just, speedy, and inexpensive manner;

(c) ADR procedures will reduce the need for judicial resources and the time and expense of the parties;

(d) mediation has, in pilot programs, resulted in the just and equitable settlement of petitions for the protection of children under Section 78A-6-304 and petitions for the terminations of parental rights under Section 78A-6-505; and

(e) the purpose of this part will be promoted by authorizing the Judicial Council to establish rules to promote the use of ADR procedures by the courts of this state as an alternative or supplement to court trial.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-204. Dispute Resolution Programs -- Director -- Duties -- Report.**

(1) Within the Administrative Office of the Courts, there shall be a director of Dispute Resolution Programs, appointed by the state court administrator.

(2) The director shall be an employee of the Administrative Office of the Courts and shall be responsible for the administration of all court-annexed Dispute Resolution Programs. The director shall have duties, powers, and responsibilities as the Judicial Council may determine. The qualifications for employment of the director shall be based on training and experience in the management, principles, and purposes of alternative dispute resolution procedures.

(3) In order to implement the purposes of this part, the Administrative Office of the Courts may employ or contract with ADR providers or ADR organizations on a case-by-case basis, on a service basis, or on a program basis. ADR providers and organizations shall be subject to the rules and fees set by the Judicial Council. The Administrative Office of the Courts shall establish programs for training ADR providers and orienting attorneys and their clients to ADR programs and procedures.

(4) An ADR provider is immune from all liability when conducting proceedings under the rules of the Judicial Council and the provisions of this part, except for

wrongful disclosure of confidential information, to the same extent as a judge of the courts in this state.

(5) (a) The director shall report annually to the Supreme Court, the Judicial Council, the governor, and the Utah State Bar on the operation of the Dispute Resolution Programs.

(b) The director shall provide the report to the Judiciary Interim Committee, if requested by the committee.

(c) Copies of the report shall be available to the public at the Administrative Office of the Courts.

(d) The report shall include:

(i) identification of participating judicial districts and the methods of alternative dispute resolution that are available in those districts;

(ii) the number and types of disputes received;

(iii) the methods of alternative dispute resolution to which the disputes were referred;

(iv) the course of the referral;

(v) the status of cases referred to alternative dispute resolution or the disposition of these disputes; and

(vi) any problems encountered in the administration of the program and the recommendations of the director as to the continuation or modification of any program.

(e) Nothing may be included in a report which would impair the privacy or confidentiality of any specific ADR proceeding.

Amended by Chapter 51, 2011 General Session

**78B-6-205. Judicial Council rules for ADR procedures.**

(1) To promote the use of ADR procedures, the Judicial Council may by rule establish experimental and permanent ADR programs administered by the Administrative Office of the Courts under the supervision of the director of Dispute Resolution Programs.

(2) The rules of the Judicial Council shall be based upon the purposes and provisions of this part. Any procedural and evidentiary rules adopted by the Supreme Court may not impinge on the constitutional rights of any parties.

(3) The rules of the Judicial Council shall include provisions:

(a) to orient parties and their counsel to the ADR program, ADR procedures, and the rules of the Judicial Council;

(b) to identify types of civil actions that qualify for ADR procedures;

(c) to refer to ADR procedures all or particular issues within a civil action;

(d) to protect persons not parties to the civil action whose rights may be affected in the resolution of the dispute;

(e) to ensure that no party or its attorney is prejudiced for electing, in good faith, not to participate in an optional ADR procedure;

(f) to exempt any case from the ADR program in which the objectives of ADR would not be realized;

(g) to create timetables to ensure that the ADR procedure is instituted and completed without undue delay or expense;

(h) to establish the qualifications of ADR providers for each form of ADR procedure including that formal education in any particular field may not, by itself, be either a prerequisite or sufficient qualification to serve as an ADR provider under the program authorized by this part;

(i) to govern the conduct of each type of ADR procedure, including the site at which the procedure is conducted;

(j) to establish the means for the selection of an ADR provider for each form of ADR procedure;

(k) to determine the powers, duties, and responsibilities of the ADR provider for each form of ADR procedure;

(l) to establish a code of ethics applicable to ADR providers with means for its enforcement;

(m) to protect and preserve the privacy and confidentiality of ADR procedures;

(n) to protect and preserve the privacy rights of the persons attending the ADR procedures;

(o) to permit waiver of all or part of fees assessed for referral of a case to the ADR program on a showing of impecuniosity or other compelling reason;

(p) to authorize imposition of sanctions for failure of counsel or parties to participate in good faith in the ADR procedure assigned;

(q) to assess the fees to cover the cost of compensation for the services of the ADR provider and reimbursement for the provider's allowable, out-of-pocket expenses and disbursements; and

(r) to allow vacation of an award by a court as provided in Section 78B-11-124.

(4) The Judicial Council may, from time to time, limit the application of its ADR rules to particular judicial districts.

Amended by Chapter 367, 2011 General Session

**78B-6-206. Minimum procedures for arbitration.**

(1) An award in an arbitration proceeding shall be in writing and, at the discretion of the arbitrator or panel of arbitrators, may state the reasons or otherwise explain the nature or amount of the award.

(2) The award shall be final and enforceable as any other judgment in a civil action, unless:

(a) within 30 days after the filing of the award with the clerk of the court any party files with the clerk of court a demand for a trial de novo upon which the case shall be returned to the trial calendar; or

(b) any party files with the arbitrator or panel of arbitrators and serves a copy on all other parties a written request to modify the award on the grounds:

(i) there is an evident miscalculation of figures or description of persons or property referred to in the award;

(ii) the award does not dispose of all the issues presented to the arbitrator or panel of arbitrators for resolution; or

(iii) the award purports to resolve issues not submitted for resolution in the arbitration process.

(c) The period for filing a demand for trial de novo is tolled until the arbitrator or

panel of arbitrators have acted on the request to modify the award, which must be completed within 30 days of the filing.

(3) The parties to an arbitration procedure may stipulate that:

(a) an award need not be filed with the court, except in those cases where the rights of third parties may be affected by the provisions of the award; and  
(b) the case is dismissed in which the award was made.

(4) (a) At any time the parties may enter into a written agreement for referral of the case or of issues in the case to arbitration pursuant to Title 78B, Chapter 11, Utah Uniform Arbitration Act, or the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq., as the parties shall specify.

(b) The court may dismiss the case, or if less than all the issues are referred to arbitration, stay the case for a reasonable period for the parties to complete a private arbitration proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-207. Minimum procedures for mediation.**

(1) A judge or court commissioner may refer to mediation any case for which the Judicial Council and Supreme Court have established a program or procedures. A party may file with the court an objection to the referral which may be granted for good cause.

(2) (a) Unless all parties and the neutral or neutrals agree only parties, their representatives, and the neutral may attend the mediation sessions.

(b) If the mediation session is pursuant to a referral under Subsection 78A-6-108(9), the ADR provider or ADR organization shall notify all parties to the proceeding and any person designated by a party. The ADR provider may notify any person whose rights may be affected by the mediated agreement or who may be able to contribute to the agreement. A party may request notice be provided to a person who is not a party.

(3) (a) Except as provided in Subsection (3)(b), any settlement agreement between the parties as a result of mediation may be executed in writing, filed with the clerk of the court, and enforceable as a judgment of the court. If the parties stipulate to dismiss the action, any agreement to dismiss shall not be filed with the court.

(b) With regard to mediation affecting any petition filed under Section 78A-6-304 or 78A-6-505:

(i) all settlement agreements and stipulations of the parties shall be filed with the court;

(ii) all timelines, requirements, and procedures described in Title 78A, Chapter 6, Parts 3 and 5, and in Title 62A, Chapter 4a, shall be complied with; and

(iii) the parties to the mediation may not agree to a result that could not have been ordered by the court in accordance with the procedures and requirements of Title 78A, Chapter 6, Parts 3 and 5, and Title 62A, Chapter 4a.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-208. Confidentiality.**

(1) ADR proceedings shall be conducted in a manner that encourages informal and confidential exchange among the persons present to facilitate resolution of the dispute or a part of the dispute. ADR proceedings shall be closed unless the parties agree that the proceedings be open. ADR proceedings may not be recorded.

(2) No evidence concerning the fact, conduct, or result of an ADR proceeding may be subject to discovery or admissible at any subsequent trial of the same case or same issues between the same parties.

(3) No party to the case may introduce as evidence information obtained during an ADR proceeding unless the information was discovered from a source independent of the ADR proceeding.

(4) Unless all parties and the neutral agree, no person attending an ADR proceeding, including the ADR provider or ADR organization, may disclose or be required to disclose any information obtained in the course of an ADR proceeding, including any memoranda, notes, records, or work product.

(5) Except as provided, an ADR provider or ADR organization may not disclose or discuss any information about any ADR proceeding to anyone outside the proceeding, including the judge or judges to whom the case may be assigned. An ADR provider or an ADR organization may communicate information about an ADR proceeding with the director for the purposes of training, program management, or program evaluation and when consulting with a peer. In making those communications, the ADR provider or ADR organization shall render anonymous all identifying information.

(6) Nothing in this section limits or affects the responsibility to report child abuse or neglect in accordance with Section 62A-4a-403.

(7) Records of ADR proceedings under this chapter or under Title 78B, Chapter 11, Utah Uniform Arbitration Act, may not be subject to Title 63G, Chapter 2, Government Records Access and Management Act, except settlement agreements filed with the court after conclusion of an ADR proceeding or awards filed with the court after the period for filing a demand for trial de novo has expired.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-209. Dispute Resolution Restricted Account -- Appropriation.**

There is created a restricted account within the General Fund known as the "Dispute Resolution Account." Three dollars of the fees established in Subsections 78A-2-301(1)(a) through (e), (1)(g), and (1)(s) shall be allocated to and deposited in the restricted account. The Legislature shall annually appropriate money from the Dispute Resolution Account to the Administrative Office of the Courts to implement the purposes of the Alternative Dispute Resolution Act.

Amended by Chapter 22, 2011 General Session

**78B-6-301. Acts and omissions constituting contempt.**

The following acts or omissions in respect to a court or its proceedings are contempts of the authority of the court:

(1) disorderly, contemptuous, or insolent behavior toward the judge while

holding the court, tending to interrupt the course of a trial or other judicial proceeding;

(2) breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

(3) misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, or other person appointed or elected to perform a judicial or ministerial service;

(4) deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding;

(5) disobedience of any lawful judgment, order or process of the court;

(6) acting as an officer, attorney or counselor, of a court without authority;

(7) rescuing any person or property that is in the custody of an officer by virtue of an order or process of the court;

(8) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the court where the action is on the calendar for trial;

(9) any other unlawful interference with the process or proceedings of a court;

(10) disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness;

(11) when summoned as a juror in a court, neglecting to attend or serve, or improperly conversing with a party to an action to be tried at the court, or with any other person, concerning the merits of an action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the communication to the court; and

(12) disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after the action or special proceeding is removed from the jurisdiction of the inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-302. Contempt in immediate presence of court -- Summary action -- Outside presence of court -- procedure.**

(1) When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily. An order shall be made, reciting the facts occurring in the immediate view and presence of the court. The order shall state that the person proceeded against is guilty of a contempt and shall be punished as prescribed in Section 78B-6-310.

(2) When the contempt is not committed in the immediate view and presence of the court or judge, an affidavit or statement of the facts by a judicial officer shall be presented to the court or judge of the facts constituting the contempt.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-303. Warrant of attachment or commitment order to show cause.**

If the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer.

If there is no previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted. A warrant of commitment may not be issued without a previous attachment to answer, or a notice or order to show cause.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-304. Bail.**

Whenever a warrant of attachment is issued pursuant to this chapter, the court or judge must direct, by an indorsement on the warrant, that the person charged may be allowed to post bail for the person's appearance, in an amount to be prescribed in the indorsement.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-305. Duty of sheriff -- Excuse for nonappearance -- Unnecessary restraint forbidden.**

(1) Upon executing the warrant of attachment, the sheriff shall keep the person in custody and bring the person before the court or judge until an order is made in the premises, unless the person arrested posts bail as provided in Section 78B-6-306.

(2) Whenever by the provisions of this chapter an officer is required to keep in custody a person arrested on a warrant of attachment and to bring the person before a court or judge, the inability from illness or otherwise of the person to attend is a sufficient excuse for not bringing the person up; and the officer must not confine a person arrested upon the warrant in a prison or otherwise restrain the person of personal liberty, except so far as may be necessary to secure the person's personal attendance.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-306. Bail bond -- Form.**

(1) When a direction to allow the person arrested to post bail is contained in the warrant of attachment, the person shall be released if bond is posted and the person executes a written promise to appear on the return of the warrant, and abide by the order of the court or judge.

(2) Any bail posted is subject to the provisions of Section 78B-6-311.

Amended by Chapter 268, 2014 General Session

**78B-6-307. Officer's return.**

The officer shall return the warrant of arrest, and the undertaking, if any, received from the person arrested, by the return day specified therein.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-308. Procedure when party charged fails to appear.**

When the warrant of arrest has been served, if the person arrested does not

appear on the specified day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted or both. If the undertaking is prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-309. Hearing.**

When the person arrested has been brought up or has appeared, the court shall proceed to investigate the charge, and hear any answer which the person arrested may make. The court may examine witnesses for or against the person arrested, for which an adjournment may be had from time to time, if necessary.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-310. Contempt -- Action by court.**

The court shall determine whether the person proceeded against is guilty of the contempt charged. If the court finds the person is guilty of the contempt, the court may impose a fine not exceeding \$1,000, order the person incarcerated in the county jail not exceeding 30 days, or both. However, a justice court judge or court commissioner may punish for contempt by a fine not to exceed \$500 or by incarceration for five days or both.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-311. Damages to party aggrieved.**

(1) If an actual loss or injury to a party in an action or special proceeding is caused by the contempt, the court, in lieu of or in addition to the fine or imprisonment imposed for the contempt, may order the person proceeded against to pay the party aggrieved a sum of money sufficient to indemnify and satisfy the aggrieved party's costs and expenses. The court may order that any bail posted by the person proceeded against be used to satisfy all or part of the money ordered to be paid to the aggrieved party. The order and the acceptance of money under it is a bar to an action by the aggrieved party for the loss and injury.

(2) A judgment creditor may request that the court pay bail posted by a judgment debtor to the judgment creditor if:

(a) the judgment debtor owes the judgment creditor funds pursuant to a court-ordered judgment;

(b) the judgment creditor provides the court with a copy of the valid judgment; and

(c) bail was posted in cash, or by credit or debit card.

(3) Upon receipt of a request by a judgment creditor, the court shall require the judgment debtor to provide either proof of payment or good cause why the court should not order the forfeiture of bail to then be paid to the judgment creditor. The court shall find that good cause exists if the judgment debtor provides admissible evidence that the

bail was paid by a third party.

(4) The court may, in its discretion, order all or a portion of the funds deposited with the court as bail to be paid to the judgment creditor towards the amount of the judgment. If the amount paid to the court exceeds the amount of the judgment, the court shall refund the excess to the judgment debtor.

(5) Within seven days of the receipt of funds, the judgment creditor shall provide to the judgment debtor an accounting of amounts received and the balance still due, if any.

Amended by Chapter 268, 2014 General Session

**78B-6-312. Imprisonment to compel performance.**

When the contempt consists of the omission to perform an act enjoined by law, which is yet in the power of the person to perform, the person may be imprisoned until the act is performed, or until released by the court. The act shall be specified in the warrant of commitment.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-313. Contempt of process of nonjudicial officer -- Procedure.**

(1) If a person, officer, referee, arbitrator, board, or committee with the authority to compel the attendance of witnesses or the production of documents issues a subpoena and the person to whom the subpoena is issued refuses to appear or produce the documents ordered, the person shall be considered in contempt.

(2) The person, officer, referee, arbitrator, board, or committee may report the person to whom the subpoena is issued to the judge of the district court. The court may then issue a warrant of attachment or order to show cause to compel the person's appearance.

(3) When a person charged has been brought up or has appeared, the person's contempt may be purged in the same manner as other contempts mentioned in this part.

Enacted by Chapter 3, 2008 General Session

**78B-6-314. Re-entry after eviction from real property.**

(1) A person who is ordered to vacate real property by a court of competent jurisdiction, who, not having a right so to do, refuses to vacate, re-enters, or takes possession of, the real property, is guilty of a contempt of the court issuing the judgment.

(2) Upon a conviction for the contempt, the court shall immediately issue an alias process, directed to the proper officer, requiring the person to restore possession of the property to the party entitled to possession under the original judgment or process.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-315. Noncompliance with child support order.**

(1) When a court of competent jurisdiction, or the Office of Recovery Services pursuant to an action under Title 63G, Chapter 4, Administrative Procedures Act, makes an order requiring a parent to furnish support or necessary food, clothing, shelter, medical care, or other remedial care for his child, and the parent fails to do so, proof of noncompliance shall be prima facie evidence of contempt of court.

(2) Proof of noncompliance may be demonstrated by showing that:

(a) the order was made, and filed with the district court; and

(b) the parent knew of the order because:

(i) the order was mailed to the parent at his last-known address as shown on the court records;

(ii) the parent was present in court at the time the order was pronounced;

(iii) the parent entered into a written stipulation and the parent or counsel for the parent was sent a copy of the order;

(iv) counsel was present in court and entered into a stipulation which was accepted and the order based upon the stipulation was then sent to counsel for the parent; or

(v) the parent was properly served and failed to answer.

(3) Upon establishment of a prima facie case of contempt under Subsection (2), the obligor under the child support order has the burden of proving inability to comply with the child support order.

(4) A court may, in addition to other available sanctions, withhold, suspend, or restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses and impose conditions for reinstatement upon a finding that:

(a) an obligor has:

(i) made no payment for 60 days on a current obligation of support as set forth in an administrative or court order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the support obligation in accordance with the order; or

(ii) made no payment for 60 days on an arrearage obligation of support as set forth in a payment schedule, written agreement with the Office of Recovery Services, or an administrative or judicial order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the arrearage obligation in accordance with the payment schedule, agreement, or order; and

(iii) not obtained a judicial order staying enforcement of the support or arrearage obligation for which the obligor would be otherwise delinquent;

(b) a custodial parent has:

(i) violated a parent-time order by denying contact for 60 days between a noncustodial parent and a child and, thereafter, has failed to make a good faith effort under the circumstances to comply with a parent-time order; and

(ii) not obtained a judicial order staying enforcement of the parent-time order; or

(c) an obligor or obligee, after receiving appropriate notice, has failed to comply with a subpoena or order relating to a paternity or child support proceeding.

**78B-6-316. Compensatory service for violation of parent-time order or failure to pay child support.**

(1) If a court finds by a preponderance of the evidence that a parent has refused to comply with the minimum amount of parent-time ordered in a decree of divorce, the court shall order the parent to:

- (a) perform a minimum of 10 hours of compensatory service; and
- (b) participate in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing a child a continuing relationship with both parents.

(2) If a custodial parent is ordered to perform compensatory service or undergo court-ordered education, there is a rebuttable presumption that the noncustodial parent be granted parent-time by the court to provide child care during the time the custodial parent is complying with compensatory service or education in order to recompense him for parent-time wrongfully denied by the custodial parent under the divorce decree.

(3) If a noncustodial parent is ordered to perform compensatory service or undergo court-ordered education, the court shall attempt to schedule the compensatory service or education at times that will not interfere with the noncustodial parent's parent-time with the child.

(4) The person ordered to participate in court-ordered education is responsible for expenses of workshops, classes, and individual counseling.

(5) If a court finds by a preponderance of the evidence that an obligor, as defined in Section 78B-12-102, has refused to pay child support as ordered by a court in accordance with Title 78B, Chapter 12, Utah Child Support Act, the court shall order the obligor to:

- (a) perform a minimum of 10 hours of compensatory service; and
- (b) participate in workshops, classes, or individual counseling to educate the obligor about the importance of complying with the court order and providing the children with a regular and stable source of support.

(6) The obligor is responsible for the expenses of workshops, classes, and individual counseling ordered by the court.

(7) If a court orders an obligor to perform compensatory service or undergo court-ordered education, the court shall attempt to schedule the compensatory service or education at times that will not interfere with the obligor's parent-time with the child.

(8) The sanctions that the court shall impose under this section do not prevent the court from imposing other sanctions or prevent any person from bringing a cause of action allowed under state or federal law.

(9) The Legislature shall allocate the money from the Children's Legal Defense Account to the judiciary to defray the cost of enforcing and administering this section.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-401. Jurisdiction of district courts -- Form -- Effect.**

(1) Each district court has the power to issue declaratory judgments determining rights, status, and other legal relations within its respective jurisdiction. An action or proceeding may not be open to objection on the ground that a declaratory judgment or decree is prayed for.

(2) The declaration may be either affirmative or negative in form and effect and shall have the force and effect of a final judgment or decree.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-402. Court's general powers.**

The provisions of Sections 78B-6-408, 78B-6-409, and 78B-6-410 do not limit or restrict the exercise of the general powers conferred in Section 78B-6-401 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-403. Parties.**

(1) When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and a declaration may not prejudice the rights of persons not parties to the proceeding.

(2) In any proceeding which involves the validity of a municipal or county ordinance or franchise, the municipality or county shall be made a party, and shall be entitled to be heard.

(3) If a statute or state franchise or permit is alleged to be invalid, the attorney general shall be served with a copy of the proceeding and be entitled to be heard.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-404. Discretion to deny declaratory relief.**

The court may refuse to render or enter a declaratory judgment or decree where a judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-405. Appeals and reviews.**

All orders, judgments, and decrees under this part may be reviewed in the same manner as other orders, judgments, and decrees.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-406. Supplemental relief.**

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application for further relief shall be by petition to a court having jurisdiction to grant the relief. If the application is considered sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be immediately granted.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-407. Trial of issues of fact.**

When a proceeding under this chapter involves the determination of an issue of fact, the issue may be tried in the court in which the proceeding is pending and determined in the same manner as issues of fact are tried and determined in other civil actions in the court.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-408. Rights, status, legal relations under instruments, or statutes may be determined.**

A person with an interest in a deed, will, or written contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may request the district court to determine any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-409. Contracts.**

A contract may be construed before or after there has been a breach.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-410. Suit by fiduciary or representative.**

Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may petition the court for a declaratory judgment:

(1) to ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-411. Costs.**

In any proceeding under this part the court may make an award of costs it considers equitable and just.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-412. Chapter to be liberally construed.**

This chapter is to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-501. Eminent domain -- Uses for which right may be exercised.**

Subject to the provisions of this part, the right of eminent domain may be exercised on behalf of the following public uses:

- (1) all public uses authorized by the federal government;
- (2) public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature;
- (3) (a) public buildings and grounds for the use of any county, city, town, or board of education;
- (b) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or sewage, including to or from a development, for the use of the inhabitants of any county, city, or town, or for the draining of any county, city, or town;
- (c) the raising of the banks of streams, removing obstructions from streams, and widening, deepening, or straightening their channels;
- (d) bicycle paths and sidewalks adjacent to paved roads;
- (e) roads, byroads, streets, and alleys for public vehicular use, including for access to a development, excluding trails, paths, or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or walkway; and
- (f) all other public uses for the benefit of any county, city, or town, or its inhabitants;
- (4) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation;
- (5) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic or other uses, or for irrigation purposes, or for the draining and reclaiming of lands, or for solar evaporation ponds and other facilities for the recovery of minerals in solution;
- (6) (a) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places to access or facilitate the milling, smelting, or other reduction of ores, or the working of mines, quarries, coal mines, or mineral deposits including oil, gas, and minerals in solution;
- (b) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits including minerals in solution;
- (c) mill dams;
- (d) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection with that, any other interests in property which may be required to

adequately examine, prepare, maintain, and operate underground natural gas storage facilities;

(e) solar evaporation ponds and other facilities for the recovery of minerals in solution; and

(f) any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter;

(7) byroads leading from a highway to:

(a) a residence; or

(b) a farm;

(8) telecommunications, electric light and electric power lines, sites for electric light and power plants, or sites for the transmission of broadcast signals from a station licensed by the Federal Communications Commission in accordance with 47 C.F.R.

Part 73 and that provides emergency broadcast services;

(9) sewage service for:

(a) a city, a town, or any settlement of not fewer than 10 families;

(b) a public building belonging to the state; or

(c) a college or university;

(10) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat;

(11) cemeteries and public parks, except for a park whose primary use is:

(a) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use;

or

(b) to connect other trails, paths, or other ways for walking, hiking, bicycling, or equestrian use;

(12) sites for mills, smelters or other works for the reduction of ores and necessary to their successful operation, including the right to take lands for the discharge and natural distribution of smoke, fumes, and dust, produced by the operation of works, provided that the powers granted by this section may not be exercised in any county where the population exceeds 20,000, or within one mile of the limits of any city or incorporated town nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least 75% in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of the four-mile radius; nor as to lands covered by contracts, easements, or agreements existing between the condemner and the owner of land within the limit and providing for the operation of such mill, smelter, or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter, or other works for the reduction of ores.

Amended by Chapter 59, 2014 General Session

**78B-6-502. Estates and rights that may be taken.**

The following estates and rights in lands are subject to being taken for public use:

- (1) a fee simple, when taken for:
  - (a) public buildings or grounds;
  - (b) permanent buildings;
  - (c) reservoirs and dams, and permanent flooding occasioned by them;
  - (d) any permanent flood control structure affixed to the land;
  - (e) an outlet for a flow, a place for the deposit of debris or tailings of a mine, mill, smelter, or other place for the reduction of ores; and
  - (f) solar evaporation ponds and other facilities for the recovery of minerals in solution, except when the surface ground is underlaid with minerals, coal, or other deposits sufficiently valuable to justify extraction, only a perpetual easement may be taken over the surface ground over the deposits;
- (2) an easement, when taken for any other use; and
- (3) the right of entry upon and occupation of lands, with the right to take from those lands earth, gravel, stones, trees, and timber as necessary for a public use.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-503. Private property which may be taken.**

Private property which may be taken under this part includes:

- (1) all real property belonging to any person;
- (2) lands belonging to the state, or to any county, city or incorporated town, not appropriated to some public use;
- (3) property appropriated to public use; provided that the property may not be taken unless for a more necessary public use than that to which it has already been appropriated;
- (4) franchises for toll roads, toll bridges, ferries, and all other franchises; provided that the franchises may not be taken unless for free highways, railroads, or other more necessary public use;
- (5) all rights of way for any and all purposes mentioned in Section 78B-6-501 hereof, and any and all structures and improvements on the property, and the lands held or used in connection with the property, shall be subject to be connected with, crossed, or intersected by any other right of way or improvement or structure; they shall also be subject to a limited use in common with the owners, when necessary; but uses of crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury; and
- (6) all classes of private property not enumerated if the taking is authorized by law.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-503.5. Other property which may be taken -- State as plaintiff.**

- (1) Subject to Subsections (2) and (3), property which may be taken under this part includes property possessed by the federal government unless the property was acquired by the federal government with the consent of the Legislature and in accordance with the United States Constitution Article I, Section 8, Clause 17.
- (2) The state shall be the plaintiff described in Section 78B-6-507 in an action to

condemn property described in Subsection (1).

(3) The following do not apply to an action authorized under Subsection (1):

- (a) Section 78B-6-505;
- (b) Section 78B-6-520;
- (c) Section 78B-6-521; and
- (d) Title 57, Chapter 12, Relocation Assistance.

Enacted by Chapter 250, 2010 General Session

**78B-6-504. Conditions precedent to taking.**

(1) Before property can be taken it must appear that:

- (a) the use to which it is to be applied is a use authorized by law;
- (b) the taking is necessary for the use;
- (c) construction and use of all property sought to be condemned will commence within a reasonable time as determined by the court, after the initiation of proceedings under this part; and
- (d) if already appropriated to some public use, the public use to which it is to be applied is a more necessary public use.

(2) (a) As used in this section, "governing body" means:

- (i) for a county, city, or town, the legislative body of the county, city, or town; and
- (ii) for any other political subdivision of the state, the person or body with authority to govern the affairs of the political subdivision.

(b) Property may not be taken by a political subdivision of the state unless the governing body of the political subdivision approves the taking.

(c) Before taking a final vote to approve the filing of an eminent domain action, the governing body of each political subdivision intending to take property shall provide written notice to each owner of property to be taken of each public meeting of the political subdivision's governing body at which a vote on the proposed taking is expected to occur and allow the property owner the opportunity to be heard on the proposed taking.

(d) The requirement under Subsection (2)(c) to provide notice to a property owner is satisfied by the governing body mailing the written notice to the property owner:

- (i) at the owner's address as shown on the records of the county assessor's office; and
- (ii) at least 10 business days before the public meeting.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-505. Negotiation and disclosure required before filing an eminent domain action.**

(1) A political subdivision of the state that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

(a) before the governing body, as defined in Subsection 78B-6-504(2)(a), of the political subdivision takes a final vote to approve the filing of an eminent domain action,

make a reasonable effort to negotiate with the property owner for the purchase of the property; and

(b) except as provided in Subsection (4), as early in the negotiation process described in Subsection (1)(a) as practicable, but no later than 14 days before the day on which a final vote is taken to approve the filing of an eminent domain action:

(i) provide the property owner a complete printed copy of the materials provided on the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203 regarding the acquisition of property for a public purpose and a property owner's right to just compensation; and

(ii) provide the property owner a written statement in substantially the following form:

"Although this letter is provided as part of an attempt to negotiate with you for the sale of your property or an interest in your property without using the power of eminent domain, [name of political subdivision] may use that power if it is not able to acquire the property by negotiation. Because of that potential, the person negotiating on behalf of the entity is required to provide the following disclosures to you.

1. You are entitled to receive just compensation for your property.

2. You are entitled to an opportunity to negotiate with [name of political subdivision] over the amount of just compensation before any legal action will be filed.

a. You are entitled to an explanation of how the compensation offered for your property was calculated.

b. If an appraiser is asked to value your property, you are entitled to accompany the appraiser during an inspection of the property.

3. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.

5. If you have a dispute with [name of political subdivision] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.

6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."

(2) Except as provided in Subsection (4), the entity involved in the acquisition of property may not bring a legal action to acquire the property under this chapter until 30 days after the day on which the disclosure and materials required in Subsection (1)(b)(ii) are provided to the property owner.

(3) A person, other than a political subdivision of the state, that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

(a) before filing an eminent domain action, make a reasonable effort to negotiate with the property owner for the purchase of the property; and

(b) except as provided in Subsection (4), as early in the negotiation process

described in Subsection (3)(a) as practicable, but no later than 30 days before the day on which the person files an eminent domain action:

(i) provide the property owner a complete printed copy of the materials provided on the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203 regarding the acquisition of property for a public purpose and a property owner's right to just compensation; and

(ii) provide the property owner a written statement in substantially the following form:

"Although this letter is provided as part of an attempt to negotiate with you for the sale of your property or an interest in your property without using the power of eminent domain, [name of entity] may use that power if it is not able to acquire the property by negotiation. Because of that potential, the person negotiating on behalf of the entity is required to provide the following disclosures to you.

1. You are entitled to receive just compensation for your property.

2. You are entitled to an opportunity to negotiate with [name of entity] over the amount of just compensation before any legal action will be filed.

a. You are entitled to an explanation of how the compensation offered for your property was calculated.

b. If an appraiser is asked to value your property, you are entitled to accompany the appraiser during an inspection of the property.

3. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.

5. If you have a dispute with [name of entity] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.

6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."

(4) The court may, upon a showing of exigent circumstances and for good cause, shorten the 14-day period described in Subsection (1)(b) or the 30-day period described in Subsection (2) or (3)(b).

Amended by Chapter 59, 2014 General Session

**78B-6-506. Right of entry for survey and location.**

(1) If land is required for public use, the person or the person's agent in charge of the use may survey and locate the property. It must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this chapter.

(2) (a) The person or the person's agent in charge of the public use may, at reasonable times and upon reasonable notice, enter upon the land and make

examinations, surveys, and maps of the land.

(b) Entry upon land as authorized under Subsection (2)(a) does not constitute a cause of action in favor of the owners of the lands, except for actual damage to the land and improvements on the land caused by the entry and which is not repaired on or before the date the examinations and surveys are completed.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-507. Complaint -- Contents.**

(1) The complaint shall contain:

(a) the name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(b) the names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants;

(c) a statement of the right of the plaintiff;

(d) if a right of way is sought, its location, general route, beginning and ending, and be accompanied by a map of the proposed right of way, as it is involved in the action or proceeding;

(e) if any interest in land is sought for a right of way or associated facilities for a subject activity as defined in Section 19-3-318:

(i) the permission of the governor with the concurrence of the Legislature authorizing:

(A) use of the site for the subject activity; and

(B) use of the proposed route for the subject activity; and

(ii) the proposed route as required by Subsection (1)(d); and

(f) a description of each piece of land sought to be taken, and whether it includes the whole or only part of an entire parcel or tract.

(2) All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-508. Who may appear and defend.**

All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint, or in the damages for the taking, though not named, including shareholders in a mutual stock water company in a proceeding involving the taking of the company or property belonging to the company, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him, in the same manner as if named in the complaint.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-509. Powers of court or judge -- Settlement offer -- Litigation expenses.**

(1) As used in this section, "litigation expenses" means costs necessary to

prepare for and conduct a trial, including:

- (a) court costs;
- (b) expert witness fees;
- (c) appraisal fees; and
- (d) reasonable attorney fees.

(2) The court shall have the power to:

(a) hear and determine all adverse or conflicting claims to the property sought to be condemned, and the damages; and

(b) determine the respective rights of different parties seeking condemnation of the same property.

(3) (a) A plaintiff described in Subsection 78B-6-507(1)(a) may make a settlement offer for purposes of this Subsection (3) at any time:

(i) following the close of discovery as ordered by the court, but no later than 60 days before the first day of trial; or

(ii) if no order setting the close of discovery exists:

(A) more than nine months from the day that the complaint is filed; and

(B) no later than 60 days before the first day of trial.

(b) Subject to Subsection (3)(c), an offer under Subsection (3)(a) shall:

(i) be in writing;

(ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure, on each defendant to whom the offer is addressed;

(iii) be an offer made:

(A) to the defendant; or

(B) if more than one defendant, jointly to all defendants who have appeared in the case and have not been dismissed;

(iv) state that the offer is being made under Subsection (3)(a); and

(v) specify the amount, less interest and litigation expenses, that the plaintiff is willing to agree is the total just compensation to which the defendant is or defendants jointly are entitled to receive for the property identified in the pending action.

(c) An offer described in Subsection (3)(a) may not be filed with the court unless accepted or in connection with a motion for the award of litigation expenses following trial.

(d) (i) Unless an offer provides a time for the offer to expire, an offer under Subsection (3)(a) shall expire and be deemed rejected 45 days after service.

(ii) An offer that expires or is rejected under Subsection (3)(d)(i):

(A) is not admissible in evidence; and

(B) may not be referred to at trial.

(4) (a) A defendant who receives an offer under Subsection (3)(a) may accept the offer by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.

(b) If there is more than one defendant, defendants may accept the offer by serving a joint acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.

(c) Any party may file with the court an offer made under Subsection (3)(a) together with its acceptance made under Subsection (4)(b).

(d) A plaintiff is entitled to a final judgment of condemnation as prayed for in the

complaint upon paying to the defendant or defendants, or depositing with the court clerk for the benefit of the defendants:

- (i) the amount of total just compensation agreed to in the offer accepted as described in Subsection (4)(a); and

- (ii) any interest due as provided by law.

- (e) If there are multiple defendants, the court shall, upon application filed by a defendant, determine each defendant's respective share of the settlement amount.

(5) (a) A defendant described in Subsection 78B-6-507(1)(b), or if there is more than one defendant that has appeared in the case and has not been dismissed, then all defendants jointly, may make an offer under this Subsection (5):

- (i) within 30 days after they receive an offer from the plaintiff under Subsection (3)(a); or

- (ii) if the plaintiff does not make an offer under Subsection (3)(a), any time following close of discovery as ordered by the court, but not later than 45 days before the first day of trial.

- (b) An offer described in Subsection (5)(a) shall:

- (i) be in writing;

- (ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure;

- (iii) (A) be made on behalf of the defendant; or

- (B) if there are multiple defendants, the offer shall be made by and on behalf of all defendants jointly who have appeared in the action and have not been dismissed;

- (iv) state that the offer is being made under Subsection (5)(a); and

- (v) specify the amount, less interest and litigation expenses, that the defendant or defendants jointly are willing to agree is the total just compensation to which the defendant is or defendants jointly are entitled to receive for the property identified in the pending action.

- (c) An offer described in Subsection (5)(a) may not be filed with the court unless accepted or in connection with a motion for the award of litigation expenses following trial.

- (d) An offer of settlement made by less than all defendants that have appeared in the case and have not been dismissed:

- (i) is not an offer under Subsection (5)(a); and

- (ii) may not be a basis for awarding litigation expenses under Subsection (7).

- (e) (i) Unless an offer provides a time for the offer to expire, an offer under Subsection (5)(a) shall expire and be deemed rejected 21 days after service.

- (ii) An offer that expires or is rejected under Subsection (5)(e)(i) is not admissible in evidence and may not be referred to at trial.

- (6) (a) A plaintiff who receives an offer under Subsection (5)(a) may accept the offer by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.

- (b) Any party may file with the court an offer made under Subsection (5)(a) together with its acceptance made under Subsection (6)(a).

- (c) A plaintiff is entitled to a final judgment of condemnation as prayed for in the complaint upon paying to the defendant or defendants, or depositing with the court clerk for the benefit of the defendants:

- (i) the amount of total just compensation agreed to in the offer accepted as

described in Subsection (6)(a); and

(ii) any interest due as provided by law.

(d) If there are multiple defendants, the court shall, upon application filed by a defendant, determine each defendant's respective share of the settlement amount.

(7) (a) Subject to Subsection (7)(b), if the total just compensation awarded to a defendant or defendants, less interest and litigation expenses, is greater than the amount of total just compensation specified in the last settlement offer made by a defendant or defendants under Subsection (5)(a), the court shall award the defendant or defendants litigation expenses not to exceed 1/3 of the amount by which the award of just compensation exceeds the amount offered in the last settlement offer under Subsection (5)(a).

(b) An award under Subsection (7)(a) may not exceed:

(i) if there is one defendant in the case, \$50,000; or

(ii) if there are multiple defendants in the case, \$100,000 total.

(c) The court shall include any amounts awarded under Subsection (7)(a) in the judgment awarding compensation.

(8) (a) Subject to Subsection (8)(b), if the total just compensation awarded to a defendant or defendants, less interest and litigation expenses, is less than the amount of total just compensation specified in the last settlement offer made by a plaintiff under Subsection (3)(a), the court shall award the plaintiff litigation expenses not to exceed 1/3 of the amount by which the last offer of settlement made under Subsection (3)(a) exceeds the total just compensation awarded.

(b) An award under Subsection (8)(a) may not exceed \$50,000.

(c) The court shall reduce the judgment awarding just compensation by the amount of litigation expenses awarded to the plaintiff under Subsection (8)(a).

(9) If the total just compensation awarded to a defendant, less interest or litigation expenses, is between an offer made by a plaintiff under Subsection (3)(a) and an offer made by the defendant under Subsection (5)(a), the court may not award litigation expenses to either plaintiff or a defendant.

(10) (a) If a plaintiff does not make an offer under Subsection (3)(a), the court may not award:

(i) the plaintiff litigation expenses; or

(ii) the defendant litigation expenses more than the defendant's last offer under Subsection (5)(a), if the defendant made an offer under Subsection (5)(a).

(b) If a defendant does not make an offer under Subsection (5)(a), the court may not award:

(i) the defendant litigation expenses; or

(ii) the plaintiff litigation expenses more than the plaintiff's last offer under Subsection (3)(a), if the plaintiff made an offer under Subsection (3)(a).

(11) A claim for attorney fees under this section must be supported by an hourly billing statement.

(12) Subsections (3) through (10) do not apply to an action filed before July 1, 2010.

Amended by Chapter 26, 2010 General Session

**78B-6-510. Occupancy of premises pending action -- Deposit paid into court -- Procedure for payment of compensation.**

(1) (a) At any time after the commencement of suit, and after giving notice to the defendant as provided in the Utah Rules of Civil Procedure, the plaintiff may file a motion with the court requesting an order permitting the plaintiff to:

(i) occupy the premises sought to be condemned pending the action, including appeal; and

(ii) to do whatever work on the premises that is required.

(b) Except as ordered by the court for good cause shown, a defendant may not be required to reply to a motion for immediate occupancy before expiration of the time to answer the complaint.

(2) The court shall:

(a) take proof by affidavit or otherwise of:

(i) the value of the premises sought to be condemned;

(ii) the damages that will accrue from the condemnation; and

(iii) the reasons for requiring a speedy occupation; and

(b) grant or refuse the motion according to the equity of the case and the relative damages that may accrue to the parties.

(3) (a) If the motion is granted, the court shall enter its order requiring that the plaintiff, as a condition precedent to occupancy, file with the clerk of the court a sum equal to the condemning authority's appraised valuation of the property sought to be condemned.

(b) That amount shall be for the purposes of the motion only and is not admissible in evidence on final hearing.

(4) (a) Upon the filing of the petition for immediate occupancy, the court shall fix the time within which, and the terms upon which, the parties in possession are required to surrender possession to the plaintiff.

(b) The court may issue orders governing encumbrances, liens, rents, assessments, insurance, and other charges, if any, as required.

(5) (a) The rights of just compensation for the land taken as authorized by this section or damaged as a result of that taking vests in the parties entitled to it.

(b) That compensation shall be ascertained and awarded as provided in Section 78B-6-511.

(c) (i) Except as provided in Subsection (5)(c)(ii), judgment shall include, as part of the just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded as the value of the property and damages, from the date of taking actual possession of the property by the plaintiff or from the date of the order of occupancy, whichever is earlier, to the date of judgment.

(ii) The court may not award interest on the amount of the judgment that was paid into court.

(6) (a) Upon the application of the parties in interest, the court shall order that the money deposited in the court be paid before judgment as an advance on the just compensation to be awarded in the proceeding.

(b) This advance payment to a defendant shall be considered to be an abandonment by the defendant of all defenses except a claim for greater compensation.

(c) If the compensation finally awarded exceeds the advance, the court shall enter judgment against the plaintiff for the amount of the deficiency.

(d) If the advance received by the defendant is greater than the amount finally awarded, the court shall enter judgment against the defendant for the amount of the excess.

(7) Arbitration of a dispute under Section 13-43-204 or 78B-6-522 is not a bar or cause to stay the action for occupancy of premises authorized by this section.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-511. Compensation and damages -- How assessed.**

The court, jury, or referee shall hear any legal evidence offered by any of the parties to the proceedings, and determine and assess:

(1) (a) the value of the property sought to be condemned and all improvements pertaining to the realty;

(b) the value of each and every separate estate or interest in the property; and

(c) if it consists of different parcels, the value of each parcel and of each estate or interest in each shall be separately assessed;

(2) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff;

(3) if the property, though no part of it is taken, will be damaged by the construction of the proposed improvement, and the amount of the damages;

(4) separately, how much the portion not sought to be condemned, and each estate or interest in it, will be benefitted, if at all, by the construction of the improvement proposed by the plaintiff. If the benefit is equal to the damages assessed under Subsection (2), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit is less than the damages assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value of the portion taken;

(5) if the property sought to be condemned consists of water rights or part of a water delivery system or both, and the taking will cause present or future damage to or impairment of the water delivery system not being taken, including impairment of the system's carrying capacity, an amount to compensate for the damage or impairment;

(6) if land on which crops are growing at the time of service of summons is sought to be condemned, the value that those crops would have had after being harvested, taking into account the expenses that would have been incurred cultivating and harvesting the crops; and

(7) as far as practicable compensation shall be assessed for each source of damages separately.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-512. Damages -- When right has accrued -- Mitigation or reduction -- Improvements.**

(1) For the purpose of assessing compensation and damages, the right to compensation and damages shall be considered to have accrued at the date of the service of summons, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where damages are allowed, as provided in Section 78B-6-511.

(2) The court or the jury shall consider mitigation or reduction of damages in its assessment of compensation and damages if, after the date of the service of summons, the plaintiff:

- (a) mitigates the damages to the property; or
- (b) reduces the amount of property actually taken.

(3) Improvements put upon the property by the property owner subsequent to the date of service of summons may not be included in the assessment of compensation or damages.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-513. When title sought found defective -- Another action allowed.**

If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the property as prescribed in this part.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-514. Payment of award -- Bond from railroad to secure fencing.**

The plaintiff shall, within 30 days after final judgment, pay the sum of money assessed; and, if the plaintiff is a railroad company, it shall also execute to the defendant a bond, with sureties, to be determined and approved by the court or judge, conditioned that the plaintiff will build proper fences within six months from the time the railroad is built on or over the land taken. In an action on the bond all damages sustained and the cost of the construction of fences may be recovered.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-515. Distribution of award -- Execution -- Annulment of proceedings on failure to pay.**

Payment may be made to the defendants entitled to payment, or the money may be deposited in court for the defendants and distributed to those entitled to payment. If the money is not paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the court upon a showing to that effect shall set aside and annul the entire proceedings, and restore possession of the property to the defendants, if possession has been taken by the plaintiff.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-516. Judgment of condemnation -- Recordation -- Effect.**

When payments have been made and the bond given, if the plaintiff elects to give one, as required by Sections 78B-6-514 and 78B-6-515, the court shall make a final judgment of condemnation, which shall describe the property condemned and the purpose of the condemnation. A copy of the judgment shall be filed in the office of the county recorder and the property described in it shall vest in the plaintiff for the purpose specified.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-517. Substitution of bond for deposit paid into court -- Abandonment of action by condemner -- Conditions of dismissal.**

In the event that no order is entered by the court permitting payment of the deposit on account of the just compensation to be awarded in the proceeding within 30 days following its deposit, the court may, on application of the condemning authority, permit the substitution of a bond in an amount and with sureties as determined and approved by the court. Condemner, whether a public or private body, may, at any time prior to final payment of compensation and damages awarded the defendant by the court or jury, abandon the proceedings and cause the action to be dismissed without prejudice, provided, however, that as a condition of dismissal condemner first compensate condemnee for all damages he has sustained and also reimburse him in full for all reasonable and necessary expenses actually incurred by condemnee because of the filing of the action by condemner, including attorney fees.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-518. Rights of cities and towns not affected.**

Nothing in this part may be construed to abrogate or repeal any statute providing for the taking of property in any city or town for street purposes.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-519. When right of way acquired -- Duty of party acquiring.**

A party obtaining a right of way shall without delay construct crossings as required by the court or judge, and keep them and the way itself in good repair.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-520. Action to set aside condemnation for failure to commence or complete construction within reasonable time.**

(1) In an action to condemn property, if the court makes a finding of what is a reasonable time for commencement of construction and use of all the property sought to be condemned and the construction and use is not accomplished within the time specified, the condemnee may file an action against the condemnor to set aside the condemnation of the entire parcel or any portion upon which construction and use was to have taken place.

(2) In the action, if the court finds that the condemnor, without reasonable

justification, did not commence or complete construction and use within the time specified, it shall enter judgment fixing the amount the condemnor has paid the condemnee, as a result of condemnation and all amounts due the condemnee as damages sustained by reason of condemnation, including damages resulting from partial completion of the contemplated use, plus all reasonable and necessary expenses actually incurred by the condemnee including attorney fees.

(3) If amounts due the condemnee under Subsection (2) exceed amounts paid by the condemnor, or these amounts are equal, judgment shall be entered in favor of the condemnee, which judgment shall describe the property condemned and award judgment for any amounts due condemnee. A copy of the judgment shall be filed in the office of the county recorder of the county, and the property described in the judgment shall vest in the condemnee.

(4) If amounts paid by the condemnor under Subsection (2) exceed amounts due the condemnee, judgment shall be entered describing the property condemned and giving the condemnee 60 days from the date of the judgment to pay the difference between the amounts to the condemnor. If payment is made, the court shall amend the judgment to reflect the payment and order the amended judgment filed with the office of the county recorder of the county, and the property described in the judgment shall vest in the condemnee. If payment is not made, the court shall amend the judgment to reflect nonpayment and order the amended judgment filed with the county recorder.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-520.3. Property sold under threat of eminent domain -- Right to repurchase property if property not used for purpose for which acquired.**

(1) As used in this section:

(a) "Acquired property" means property that a condemnor purchases after May 11, 2009 from a condemnee under threat of condemnation.

(b) "Acquisition price" means the price which a condemnor pays a condemnee for property that the condemnor acquires under threat of condemnation.

(c) "Condemnee" means an owner of property who sells the property to a condemnor under threat of condemnation.

(d) "Condemnor" means a person who acquires property by purchase from a condemnee under threat of condemnation.

(e) "Under threat of condemnation" means the circumstances under which a condemnor, with the right to acquire the property by eminent domain, acquires property from a condemnee in a transaction that occurs:

(i) without a judgment having been entered in an eminent domain action; and  
(ii) after the condemnor has sent the condemnee a written notice indicating an intent to pursue an eminent domain action to a judgment compelling the transaction.

(2) At the time of or within a reasonable time after an acquisition of property under threat of condemnation, a condemnor shall provide the condemnee a written statement identifying the public use for which the property is being acquired.

(3) Subject to Subsection (6), before the acquired property may be put to a use other than the public use for which the property was acquired, the condemnor shall send a written offer by certified mail to the condemnee at the condemnee's last known

address, offering to sell the acquired property to the condemnee at the acquisition price.

(4) (a) A condemnee may accept an offer under Subsection (3) if the offer is accepted within 90 days after the offer is sent to the condemnee.

(b) A condemnee's purchase of acquired property under this section shall be concluded within a reasonable time after the condemnee accepts the condemnor's offer to sell the acquired property.

(5) If the condemnee does not accept an offer under Subsection (3) within the time specified in Subsection (4), the condemnor has no further obligation under this section to the condemnee with respect to the acquired property.

(6) If a condemnor puts acquired property to the public use for which the property was acquired, the condemnor's obligation under Subsection (3) to offer to sell the acquired property to the condemnee terminates, even if the acquired property is subsequently put to a use other than the public use for which the property was acquired.

(7) A sale or transfer of acquired property none of which has been put to the public use for which the property was acquired is:

(a) considered to be a use other than the public use for which the property was acquired; and

(b) governed by this section and not Section 78B-6-521.

(8) Nothing in this section may be construed to affect any right or obligation under Section 78B-6-521.

(9) A condemnee may waive the condemnee's right to purchase acquired property as provided in this section by executing a written waiver.

Enacted by Chapter 322, 2009 General Session

**78B-6-521. Sale of property acquired by eminent domain.**

(1) As used in this section, "condemnation or threat of condemnation" means:

(a) acquisition through an eminent domain proceeding; or

(b) an official body of the state or a subdivision of the state, having the power of eminent domain, has specifically authorized the use of eminent domain to acquire the real property.

(2) If the state or one of its subdivisions, at its sole discretion, declares real property that is acquired through condemnation or threat of condemnation to be surplus real property, it may not sell the real property on the open market unless:

(a) the real property has been offered for sale to the original grantor, at the highest offer made to the state or one of its subdivisions with first right of refusal being given to the original grantor;

(b) the original grantor expressly waived in writing the first right of refusal on the offer or failed to accept the offer within 90 days after notification by registered mail to the last-known address; and

(c) neither the state nor the subdivision of the state selling the property is involved in the rezoning of the property or the acquisition of additional property to enhance the value of the real property to be sold.

(3) This section shall only apply to property acquired after July 1, 1983.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-522. Dispute resolution.**

(1) In any dispute between a condemner and a private property owner arising out of this chapter, or a dispute over the taking of private property for a public use without the prior use of eminent domain, the private property owner may submit the dispute for mediation or arbitration to the Office of the Property Rights Ombudsman under Section 13-43-204.

(2) An action submitted to the Office of the Property Rights Ombudsman under authority of this section does not bar or stay any action for occupancy of premises authorized by Section 78B-6-510.

(3) (a) (i) A mediator or arbitrator, acting at the request of the property owner under Section 13-43-204, has standing in an action brought in district court under this chapter to file with the court a motion to stay the action during the pendency of the mediation or arbitration.

(ii) A mediator or arbitrator may not file a motion to stay under Subsection (3)(a)(i) unless the mediator or arbitrator certifies at the time of filing the motion that a stay is reasonably necessary to reach a resolution of the case through mediation or arbitration.

(b) If a stay is granted pursuant to a motion under Subsection (3)(a) and the order granting the stay does not specify when the stay terminates, the mediator or arbitrator shall file with the district court a motion to terminate the stay within 30 days after:

(i) the resolution of the dispute through mediation;  
(ii) the issuance of a final arbitration award; or  
(iii) a determination by the mediator or arbitrator that mediation or arbitration is not appropriate.

(4) (a) The private property owner or displaced person may request that the mediator or arbitrator authorize an additional appraisal.

(b) If the mediator or arbitrator determines that an additional appraisal is reasonably necessary to reach a resolution of the case, the mediator or arbitrator may:

(i) have an additional appraisal of the property prepared by an independent appraiser; and

(ii) require the condemnor to pay the costs of the first additional appraisal.

Amended by Chapter 59, 2014 General Session

**78B-6-601. Penalty for wrongful refusal to allow writ of habeas corpus.**

Any judge, whether acting individually or as a member of a court, who wrongfully and willfully refuses to allow a writ of habeas corpus whenever proper application has been made shall forfeit and pay a sum not exceeding \$5,000 to the aggrieved party.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-602. Recommitment.**

(1) In all cases where it is claimed that a person is illegally or wrongfully restrained or deprived of his liberty, where restraint or imprisonment is for a criminal offense and there is not sufficient cause for release, even though the commitment may have been informally made or without due authority, or the process may have been executed by a person not duly authorized, the court or judge may make a new commitment, or allow the party to post bail, if the case is bailable.

(2) All material witnesses shall be required to appear at the same time and place and not depart without leave. All documents shall be filed in the clerk's office.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-603. Recommitment after discharge forbidden -- Exceptions.**

A person who has been discharged by order of the court or judge upon habeas corpus may not be imprisoned again, restrained, or kept in custody for the same cause, except in the following cases:

(1) if the person has been discharged from custody on a criminal charge and is afterward committed for the same offense by legal order or process; or

(2) if, after discharge for defect of proof or for any defect of the process, warrant or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-604. Refusing to exhibit authority for detention -- Penalty.**

A person who refuses to deliver a copy of the legal process by which the person detains the plaintiff in custody to anyone who demands a copy for the purpose of filing a writ of habeas corpus is liable to the plaintiff in an amount not to exceed \$200.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-605. Penalties for wrongful acts of defendant.**

(1) A defendant, officer, or other person is guilty of a class B misdemeanor and liable to the injured party in an amount not to exceed \$5,000 if:

(a) the defendant attempts to evade the service of the writ of habeas corpus; or  
(b) an officer or other person willfully fails to comply with the legal duties imposed upon him or disobeys an order to release a person in custody.

(2) Any person knowingly aiding in or abetting invalidation of this section is subject to the same punishment and forfeiture.

Enacted by Chapter 3, 2008 General Session

**78B-6-606. Judgment of removal -- Costs -- Penalty by fine where state is party.**

If a defendant is found guilty of usurping, intruding into or unlawfully holding or exercising an office, franchise, or privilege, the court shall order the defendant removed from the office, and that the relator recover the costs of pursuing the action. The court

may also, in its discretion, in actions to which the state is a party impose upon the defendant a fine not exceeding \$5,000, to be paid to the state treasury.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-607. Judgment against director of corporation -- Of induction in favor of person entitled.**

When the action is against a director of a corporation, and the court finds that, at the election, either illegal votes were received or legal votes were rejected, or both, sufficient to change the result, the court may order the defendant removed, and judgment of induction entered in favor of the person who was entitled to be declared elected at the election.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-608. Action for damages because of usurpation -- Limitation of action.**

A person may, at any time within one year after the date of an order for removal, bring an action against the party removed under the provisions of Section 78B-6-606 or 78B-6-607 and recover the damages sustained by the usurpation.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-609. Mandamus and prohibition -- Judgment.**

In any proceeding to obtain a writ of mandate or prohibition, if judgment is given for the applicant, he may recover the damages which were sustained, as found by the jury, or determined by the court, or referees upon a reference, ordered together with costs. For damages and costs an execution may issue, and a peremptory mandate shall be awarded without delay.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-610. Disobedience of writ -- Punishment.**

When a peremptory writ of mandate or writ of prohibition has been issued and directed to an inferior tribunal, corporation, board, or person, and the court determines that any member of the tribunal, corporation, board, or person upon whom the writ was personally served has, without just excuse, refused or neglected to obey the writ, the court may, upon motion, impose a fine not exceeding \$500. In cases of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for enforcement of the writ.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-701. Title.**

This part is known and may be cited as the "Utah Product Liability Act."

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-702. Definition -- Unreasonably dangerous.**

As used in this part, "unreasonably dangerous" means that the product was dangerous to an extent beyond which would be contemplated by the ordinary and prudent buyer, consumer, or user of that product in that community considering the product's characteristics, propensities, risks, dangers, and uses together with any actual knowledge, training, or experience possessed by that particular buyer, user, or consumer.

Enacted by Chapter 3, 2008 General Session

**78B-6-703. Defect or defective condition making product unreasonably dangerous -- Rebuttable presumption.**

(1) In any action for damages for personal injury, death, or property damage allegedly caused by a defect in a product, a product may not be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the product unreasonably dangerous to the user or consumer.

(2) There is a rebuttable presumption that a product is free from any defect or defective condition where the alleged defect in the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were in conformity with government standards established for that industry which were in existence at the time the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were adopted.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-704. Prayer for damages.**

No dollar amount shall be specified in the prayer of a complaint filed in a product liability action against a product manufacturer, wholesaler or retailer. The complaint shall merely pray for such damages as are reasonable in the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-705. Alteration or modification of product after sale as substantial contributing cause -- Manufacturer or seller not liable.**

For purposes of Section 78B-5-818, fault shall include an alteration or modification of the product, which occurred subsequent to the sale by the manufacturer or seller to the initial user or consumer, and which changed the purpose, use, function, design, or intended use or manner of use of the product from that for which the product was originally designed, tested, or intended.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-706. Statute of limitations.**

A civil action under this part shall be brought within two years from the time the individual who would be the claimant in the action discovered, or in the exercise of due diligence should have discovered, both the harm and its cause.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-707. Indemnification provisions void and unenforceable.**

Any clause in a sales contract or collateral document that requires a purchaser or end user of a product to indemnify, hold harmless, or defend a manufacturer of a product is contrary to public policy and void and unenforceable if a defect in the design or manufacturing of the product causes an injury or death.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-801. Definitions.**

(1) "Commercial tenant" means any tenant who may be a body politic and corporate, partnership, association, or company.

(2) "Forcible detainer" means:

(a) holding and keeping by force, or by menaces and threats of violence, the possession of any real property, whether acquired peaceably or otherwise; or

(b) unlawfully entering real property during the absence of the occupants or at night, and, after demand is made for the surrender of the property, refusing for a period of three days to surrender the property to the former occupant.

(3) "Forcible entry" means:

(a) entering any real property by:

(i) breaking open doors, windows, or other parts of a house;

(ii) fraud, intimidation, or stealth; or

(iii) any kind of violence or circumstances of terror; or

(b) after entering peaceably upon real property, turning out by force, threats, or menacing conduct the party in actual possession.

(4) "Occupant of real property" means one who within five days preceding an unlawful entry was in the peaceable and undisturbed possession of the property.

(5) "Owner:"

(a) means the actual owner of the premises;

(b) has the same meaning as landlord under common law and the statutes of this state; and

(c) includes the owner's designated agent or successor to the estate.

(6) "Tenant" means any natural person and any individual, including a commercial tenant.

(7) "Unlawful detainer" means unlawfully remaining in possession of property after receiving a notice to quit, served as required by this chapter, and failing to comply with that notice.

(8) "Willful exclusion" means preventing the tenant from entering into the premises with intent to deprive the tenant of entry.

Amended by Chapter 184, 2009 General Session

Amended by Chapter 298, 2009 General Session

**78B-6-802. Unlawful detainer by tenant for a term less than life.**

(1) A tenant holding real property for a term less than life, is guilty of an unlawful detainer if the tenant:

(a) except as provided in Subsection (1)(i), continues in possession, in person or by subtenant, of the property or any part of it, after the expiration of the specified term or period for which it is let to him, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period;

(b) having leased real property for an indefinite time with monthly or other periodic rent reserved and except as provided in Subsection (1)(i):

(i) continues in possession of it in person or by subtenant after the end of any month or period, in cases where the owner, the owner's designated agent, or any successor in estate of the owner, 15 calendar days or more prior to the end of that month or period, has served notice requiring the tenant to quit the premises at the expiration of that month or period; or

(ii) in cases of tenancies at will, remains in possession of the premises after the expiration of a notice of not less than five calendar days;

(c) continues in possession, in person or by subtenant, after default in the payment of any rent or other amounts due and after a notice in writing requiring in the alternative the payment of the rent and other amounts due or the surrender of the detained premises, has remained uncomplied with for a period of three calendar days after service, which notice may be served at any time after the rent becomes due;

(d) assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises after service of a three calendar days' notice to quit;

(e) sets up or carries on any unlawful business on or in the premises after service of a three calendar days' notice to quit;

(f) suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section 78B-6-1107 after service of a three calendar days' notice to quit;

(g) commits a criminal act on the premises and remains in possession after service of a three calendar days' notice to quit;

(h) continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the property, served upon the tenant and upon any subtenant in actual occupation of the premises remains uncomplied with for three calendar days after service; or

(i) (i) is a tenant under a bona fide tenancy as provided in Section 702 of the Protecting Tenants at Foreclosure Act of 2009, Pub. L. 111-22; and

(ii) continues in possession after the effective date of a notice to vacate given in accordance with Section 702 of the Protecting Tenants at Foreclosure Act of 2009, Pub. L. 111-22.

(2) Within three calendar days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or covenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, or the violation cannot be brought into compliance, the notice provided for in Subsections (1)(d) through (g) may be given.

(3) Unlawful detainer by an owner resident of a mobile home is determined under Title 57, Chapter 16, Mobile Home Park Residency Act.

(4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply to nuisance actions provided in Sections 78B-6-1107 through 78B-6-1114.

Amended by Chapter 66, 2010 General Session

**78B-6-802.5. Unlawful detainer after foreclosure or forced sale.**

A previous owner, trustor, or mortgagor of a property is guilty of unlawful detainer if the person:

(1) defaulted on his or her obligations resulting in disposition of the property by a trustee's sale or sheriff's sale; and

(2) continues to occupy the property after the trustee's sale or sheriff's sale after being served with a notice to quit by the purchaser.

Enacted by Chapter 184, 2009 General Session

**78B-6-803. Right of tenant of agricultural lands to hold over.**

In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the owner, the tenant shall be considered to be in possession by permission of the owner. The tenant shall be entitled to hold under the terms of the lease for another full year and may not be guilty of an unlawful detainer during that year. The holding over for the 60-day period shall be taken and construed as a consent on the part of the tenant to hold for another year.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-804. Remedies available to tenant against undertenant.**

A tenant may take proceedings similar to those prescribed in this part to obtain possession of premises let to an undertenant in case of the undertenant's unlawful detention of the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-805. Notice to quit -- How served.**

(1) The notices required by this part may be served:

(a) by delivering a copy to the tenant personally or, if the tenant is a commercial tenant, by delivering a copy to the commercial tenant's usual place of business by

leaving a copy of the notice with a person of suitable age and discretion;

(b) by sending a copy through registered or certified mail addressed to the tenant at the tenant's residence or, if the tenant is a commercial tenant, by sending a copy through registered or certified mail addressed to the commercial tenant's usual place of business;

(c) if the tenant is absent from the residence or usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at the tenant's residence or place of business;

(d) if a person of suitable age or discretion cannot be found at the place of residence, then by affixing a copy in a conspicuous place on the leased property; or

(e) if an order of abatement by eviction of the nuisance is issued by the court as provided in Section 78B-6-1109, when issued, the parties present shall be on notice that the abatement by eviction order is issued and immediately effective or as to any absent party, notice shall be given as provided in Subsections (1)(a) through (e).

(2) Service upon a subtenant may be made in the same manner as provided in Subsection (1).

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-806. Necessary parties defendant.**

(1) No person other than the tenant of the premises, a lease signer, and subtenant if there is one in the actual occupation of the premises when the action is commenced, may be made a party defendant in the proceeding, except as provided in Section 78B-6-1111. A proceeding may not abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made a party defendant. If it appears that any of the parties served with process or appearing in the proceedings are guilty, judgment shall be rendered against those parties.

(2) If a person has become a subtenant of the premises in controversy after the service of any notice as provided in this part, the fact that the notice was not served on the subtenant is not a defense to the action. All persons who enter under the tenant after the commencement of the action shall be bound by the judgment the same as if they had been made parties to the action.

(3) A landlord, owner, or designated agent is a necessary party defendant only in an abatement by eviction action for an unlawful drug house as provided in Section 78B-6-1111.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-807. Allegations permitted in complaint -- Time for appearance -- Service of summons.**

(1) The plaintiff, in his complaint:

(a) shall set forth the facts on which he seeks to recover;

(b) may set forth any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer; and

(c) claim damages or compensation for the occupation of the premises, or both.

(2) If the unlawful detainer charged is after default in the payment of rent, the

complaint shall state the amount of rent due.

(3) A judge, court clerk, or plaintiff's counsel shall endorse on the summons the number of days within which the defendant is required to appear and defend the action, which shall be three business days from the date of service, unless the defendant objects to the number of days, and the court determines that the facts of the case should allow more time.

(4) The court may authorize service by publication or mail for cause shown.

(5) Service by publication is complete one week after publication.

(6) Service by mail is complete three days after mailing.

(7) The summons shall be changed in form to conform to the time of service as ordered, and shall be served as in other cases.

Renumbered and Amended by Chapter 3, 2008 General Session

Amended by Chapter 121, 2008 General Session

**78B-6-808. Possession bond of plaintiff -- Alternative remedies.**

(1) At any time between the filing of the complaint and the entry of final judgment, the plaintiff may execute and file a possession bond. The bond may be in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action.

(2) The court shall approve the bond in an amount which is the probable amount of costs of suit and damages which may result to the defendant if the suit has been improperly instituted. The bond shall be payable to the clerk of the court for the benefit of the defendant for all costs and damages actually adjudged against the plaintiff.

(3) The plaintiff shall notify the defendant of the possession bond. This notice shall be served in the same manner as service of summons and shall inform the defendant of all of the alternative remedies and procedures under Subsection (4).

(4) The following are alternative remedies and procedures applicable to an action if the plaintiff files a possession bond under Subsections (1) through (3):

(a) With respect to an unlawful detainer action based solely upon nonpayment of rent or other amounts due, the existing contract shall remain in force and the complaint shall be dismissed if the defendant, within three calendar days of the service of the notice of the possession bond, pays accrued rent, all other amounts due, and other costs, including attorney fees, as provided in the rental agreement.

(b) (i) The defendant may remain in possession if he executes and files a counter bond in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action.

(ii) The form of the bond is at the defendant's option.

(iii) The bond shall be payable to the clerk of the court.

(iv) The defendant shall file the bond prior to the later of the expiration of three business days from the date he is served with notice of the filing of plaintiff's possession bond or within 24 hours after the court sets the bond amount.

(v) Notwithstanding Subsection (4)(b)(iv), the court may allow a period of up to 72 hours for the posting of the counter bond.

(vi) The court shall approve the bond in an amount which is the probable

amount of costs of suit, including attorney fees and actual damages which may result to the plaintiff if the defendant has improperly withheld possession.

(vii) The court shall consider prepaid rent to the owner as a portion of the defendant's total bond.

(c) If the defendant demands, within three days of being served with notice of the filing of plaintiff's possession bond, the defendant shall be granted a hearing within three days of the defendant's demand.

(5) If the defendant does not elect and comply with a remedy under Subsection (4) within the required time, the plaintiff, upon ex parte motion, shall be granted an order of restitution. A constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff promptly.

(6) If the defendant demands a hearing under Subsection (4)(c), and if the court rules after the hearing that the plaintiff is entitled to possession of the property, the constable or sheriff shall promptly return possession of the property to the plaintiff. If at the hearing the court allows the defendant to remain in possession and further issues remain to be adjudicated between the parties, the court shall require the defendant to post a bond as required in Subsection (4)(b) and shall expedite all further proceedings, including beginning the trial no later than 30 days from the posting of the plaintiff's bond, unless the parties otherwise agree.

(7) If at the hearing the court rules that all issues between the parties can be adjudicated without further court proceedings, the court shall, upon adjudicating those issues, enter judgment on the merits.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-809. Proof required of plaintiff -- Defense.**

(1) On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer.

(2) In defense, the defendant may show that he or his ancestors, or those whose interest in the premises he claims, had been in the quiet possession of the property for the space of one entire year continuously before the commencement of the proceedings, and that his interest is not ended or determined, and that this showing is a bar to the proceedings.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-810. Court procedures.**

(1) In an action under this chapter in which the tenant remains in possession of the property:

(a) the court shall expedite the proceedings, including the resolution of motions and trial;

(b) the court shall begin the trial within 60 days after the day on which the complaint is served, unless the parties agree otherwise; and

(c) if this chapter requires a hearing to be held within a specified time, the time

may be extended to the first date thereafter on which a judge is available to hear the case in a jurisdiction in which a judge is not always available.

(2) (a) In an action for unlawful detainer where the claim is for nonpayment of rent or for occupancy of a property after a forced sale as described in Subsection 78B-6-802.5, the court shall hold an evidentiary hearing, upon request of either party, within 10 days after the day on which the defendant files the defendant's answer.

(b) At the evidentiary hearing held in accordance with Subsection (2)(a):

(i) the court shall determine who has the right of occupancy during the litigation's pendency; and

(ii) if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate those issues and enter judgment on the merits.

(3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges an act that would be considered criminal under the laws of this state, the court shall hold an evidentiary hearing within 10 days after the day on which the complaint is filed to determine whether the alleged act occurred.

(b) The hearing required by Subsection (3)(a) shall be set at the time the complaint is filed and notice of the hearing shall be served upon the defendant with the summons at least three calendar days before the scheduled time of the hearing.

(c) If the court, at an evidentiary hearing held in accordance with Subsection (3)(a), determines that it is more likely than not that the alleged act occurred, the court shall issue an order of restitution.

(d) If an order of restitution is issued in accordance with Subsection (3)(c), a constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff immediately.

(e) The court may allow a period of up to 72 hours before restitution may be made under Subsection (3)(d) if the court determines the time is appropriate under the circumstances.

(f) At the evidentiary hearing held in accordance with Subsection (3)(a), if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate those issues and enter judgment on the merits.

(g) "An act that would be considered criminal under the laws of this state" under Subsection (3)(a) includes only the following:

(i) an act that would be considered a felony under the laws of this state;

(ii) an act that would be considered criminal affecting the health or safety of a tenant, the landlord, the landlord's agent, or other person on the landlord's property;

(iii) an act that would be considered criminal that causes damage or loss to any tenant's property or the landlord's property;

(iv) a drug- or gang-related act that would be considered criminal;

(v) an act or threat of violence against any tenant or other person on the premises, or against the landlord or the landlord's agent; and

(vi) any other act that would be considered criminal that the court determines directly impacts the peaceful enjoyment of the premises by any tenant.

(4) (a) At any hearing held in accordance with this chapter in which the tenant after receiving notice fails to appear, the court shall issue an order of restitution.

(b) If an order of restitution is issued in accordance with Subsection (4)(a), a

constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff immediately.

(5) A court adjudicating matters under this chapter may make other orders as are appropriate and proper.

(6) The expedited hearing provisions in this section do not apply to actions involving commercial tenants.

Amended by Chapter 184, 2009 General Session

Amended by Chapter 298, 2009 General Session

**78B-6-811. Judgment for restitution, damages, and rent -- Immediate enforcement -- Treble damages.**

(1) (a) A judgment may be entered upon the merits or upon default.

(b) A judgment entered in favor of the plaintiff shall include an order for the restitution of the premises as provided in Section 78B-6-812.

(c) If the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

(d) (i) A forfeiture under Subsection (1)(c) does not release a defendant from any obligation for payments on a lease for the remainder of the lease's term.

(ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate damages.

(2) The jury or the court, if the proceeding is tried without a jury or upon the defendant's default, shall also assess the damages resulting to the plaintiff from any of the following:

(a) forcible entry;

(b) forcible or unlawful detainer;

(c) waste of the premises during the defendant's tenancy, if waste is alleged in the complaint and proved at trial;

(d) the amounts due under the contract, if the alleged unlawful detainer is after default in the payment of amounts due under the contract; and

(e) the abatement of the nuisance by eviction as provided in Sections 78B-6-1107 through 78B-6-1114.

(3) The judgment shall be entered against the defendant for the rent, for three times the amount of the damages assessed under Subsections (2)(a) through (2)(e), and for reasonable attorney fees.

(4) (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be issued immediately after the entry of the judgment.

(b) In all cases, the judgment may be issued and enforced immediately.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-812. Order of restitution -- Service -- Enforcement -- Disposition of personal property -- Hearing.**

(1) Each order of restitution shall:

(a) direct the defendant to vacate the premises, remove the defendant's personal property, and restore possession of the premises to the plaintiff, or be forcibly removed by a sheriff or constable;

(b) advise the defendant of the time limit set by the court for the defendant to vacate the premises, which shall be three calendar days following service of the order, unless the court determines that a longer or shorter period is appropriate under the circumstances; and

(c) advise the defendant of the defendant's right to a hearing to contest the manner of its enforcement.

(2) (a) A copy of the order of restitution and a form for the defendant to request a hearing as listed on the form shall be served in accordance with Section 78B-6-805 by a person authorized to serve process pursuant to Subsection 78B-8-302(1). If personal service is impossible or impracticable, service may be made by:

(i) mailing a copy of the order and the form by first class mail to the defendant's last-known address and posting a copy of the order and the form at a conspicuous place on the premises; or

(ii) mailing a copy of the order and the form to the commercial tenant defendant's last-known place of business and posting a copy of the order and the form at a conspicuous place on the business premises.

(b) A request for hearing by the defendant may not stay enforcement of the restitution order unless:

(i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property bond to the clerk of the court in an amount approved by the court according to the formula set forth in Subsection 78B-6-808(4)(b); and

(ii) the court orders that the restitution order be stayed.

(c) The date of service, the name, title, signature, and telephone number of the person serving the order and the form shall be legibly endorsed on the copy of the order and the form served on the defendant.

(d) The person serving the order and the form shall file proof of service in accordance with Rule 4(e), Utah Rules of Civil Procedure.

(3) (a) If the defendant fails to comply with the order within the time prescribed by the court, a sheriff or constable at the plaintiff's direction may enter the premises by force using the least destructive means possible to remove the defendant.

(b) Personal property of the defendant may be removed from the premises by the sheriff or constable and transported to a suitable location for safe storage. The sheriff or constable may delegate responsibility for inventory, moving, and storage to the plaintiff, who shall store the personal property in a suitable place and in a reasonable manner.

(c) A tenant may not access the property until the removal and storage costs have been paid in full, except that the tenant shall be provided reasonable access within five business days to retrieve:

(i) clothing;

(ii) identification;

(iii) financial documents, including all those related to the tenant's immigration status, employment status;

(iv) documents pertaining to receipt of public services; and

(v) medical information, prescription medications, and any medical equipment required for maintenance of medical needs.

(d) The personal property removed and stored shall, after 15 calendar days, be considered abandoned property and subject to Section 78B-6-816.

(4) In the event of a dispute concerning the manner of enforcement of the restitution order, the defendant may file a request for a hearing. The court shall set the matter for hearing within 10 calendar days from the filing of the request, or as soon thereafter as practicable, and shall mail notice of the hearing to the parties.

(5) The Judicial Council shall draft the forms necessary to implement this section.

Amended by Chapter 206, 2013 General Session

**78B-6-813. Time for appeal.**

(1) Except as provided in Subsection (2), either party may, within 10 days, appeal from the judgment rendered.

(2) In a nuisance action under Sections 78B-6-1107 through 78B-6-1114, any party may appeal from the judgment rendered within three days.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-814. Exclusion of tenant without judicial process prohibited -- Abandoned premises excepted.**

It is unlawful for an owner to willfully exclude a tenant from the tenant's premises in any manner except by judicial process, provided, an owner or his agent shall not be prevented from removing the contents of the leased premises under Subsection 78B-6-816(2) and retaking the premises and attempting to rent them at a fair rental value when the tenant has abandoned the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-815. Abandonment.**

"Abandonment" is presumed in either of the following situations:

(1) The tenant has not notified the owner that he or she will be absent from the premises, and the tenant fails to pay rent within 15 days after the due date, and there is no reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the premises.

(2) The tenant has not notified the owner that he or she will be absent from the premises, and the tenant fails to pay rent when due and the tenant's personal property has been removed from the dwelling unit and there is no reasonable evidence that the tenant is occupying the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-816. Abandoned premises -- Retaking and rerenting by owner -- Liability of tenant -- Personal property of tenant left on premises.**

(1) In the event of abandonment, the owner may retake the premises and attempt to rent them at a fair rental value and the tenant who abandoned the premises shall be liable:

(a) for the entire rent due for the remainder of the term; or

(b) for rent accrued during the period necessary to rerent the premises at a fair rental value, plus the difference between the fair rental value and the rent agreed to in the prior rental agreement, plus a reasonable commission for the renting of the premises and the costs, if any, necessary to restore the rental unit to its condition when rented by the tenant less normal wear and tear. This Subsection (1) applies, if less than Subsection (1)(a), notwithstanding that the owner did not rerent the premises.

(2) (a) If the tenant has abandoned the premises and has left personal property on the premises, the owner is entitled to remove the property from the dwelling, store it for the tenant, and recover actual moving and storage costs from the tenant.

(b) (i) The owner shall post a copy of the notice in a conspicuous place and send by first class mail to the last known address for the tenant a notice that the property is considered abandoned.

(ii) The tenant may retrieve the property within 15 calendar days from the date of the notice if the tenant tenders payment of all costs of inventory, moving, and storage to the owner.

(iii) Except as provided in Subsection (5), if the property has been in storage for at least 15 calendar days and the tenant has made no reasonable effort to recover the property after notice was sent, pay reasonable costs associated with the inventory, removal, and storage, and no court hearing on the property is pending, the owner may:

(A) sell the property at a public sale and apply the proceeds toward any amount the tenant owes; or

(B) donate the property to charity if the donation is a commercially reasonable alternative.

(c) Any money left over from the public sale of the property shall be handled as specified in Title 67, Chapter 4a, Part 2, Standards for Determining When Property is Abandoned or Unclaimed.

(d) Nothing contained in this act shall be in derogation of or alter the owner's rights under Title 38, Chapter 3, Lessors' Liens, or any other contractual liens or rights.

(3) If abandoned property is determined to belong to a person who is the tenant or an occupant, the tenant or occupant may claim the property, upon payment of any costs, inventory, moving, and storage, by delivery of a written demand with evidence of ownership of the personal property within 15 calendar days after the notice described in Subsection (2)(b) is sent. The owner may not be liable for the loss of the abandoned personal property if the written demand is not received.

(4) As used in this section, "personal property" does not include a motor vehicle, as defined in Section 41-1a-102.

(5) A tenant has no recourse for damage or loss if the tenant fails to recover any abandoned property as required in this section.

(6) An owner is not required to store the following abandoned personal property:

(a) chemicals, pests, potentially dangerous or other hazardous materials;

(b) animals, including dogs, cats, fish, reptiles, rodents, birds, or other pets;

(c) gas, fireworks, combustibles, or any item considered to be hazardous or

explosive;

(d) garbage;

(e) perishable items; or

(f) items that when placed in storage might create a hazardous condition or a pest control issue.

(7) An owner shall give an extension for up to 15 calendar days, beyond the 15 calendar day limit described in Subsection (2)(b)(ii), to recover the abandoned property, if a tenant provides:

(a) a copy of a police report or protection order for situations of domestic violence, as defined in Section 77-36-1;

(b) verification of an extended hospitalization from a verified medical provider; or

(c) a death certificate or obituary for a tenant's death, provided by an immediate family member.

(8) Items listed in Subsection (6) may be properly disposed of by the owner immediately upon determination of abandonment. A tenant may not recover for disposal of abandoned items listed in Subsection (6).

(9) Notice of any public sale shall be mailed to the last known address of the tenant at least five calendar days prior to the public sale.

(10) If the tenant is present at the public sale:

(a) the tenant may specify the order in which the personal property is sold;

(b) the owner may sell only as much personal property necessary to satisfy the amount due under the rental agreement and statutorily allowed damages, costs, and fees associated with the abandoned items; and

(c) any unsold personal property shall be released to the tenant.

(11) If the tenant is not present at the public sale:

(a) all items may be sold; and

(b) any surplus amount over the amount due to the owner shall be paid to the tenant, if the tenant's current location is known. If the tenant's location is not known, any surplus shall be disposed of in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

Amended by Chapter 206, 2013 General Session

**78B-6-901. Form of action -- Judgment -- Special execution.**

(1) There is only one action for the recovery of any debt, or the enforcement of any right, secured solely by mortgage upon real estate and that action shall be in accordance with the provisions of this chapter.

(2) A judgment shall include:

(a) the amount due, with costs and disbursements;

(b) an order for the sale of mortgaged property, or a portion of it to satisfy the amount and accruing costs;

(c) direction to the sheriff to proceed and sell the property according to the provisions of law relating to sales on execution; and

(d) a special execution or order of sale shall be issued for that purpose.

Amended by Chapter 146, 2009 General Session

**78B-6-901.5. Notice to tenant on residential property to be foreclosed.**

(1) As used in this section, "residential rental property" means property on which a mortgage was given to secure an obligation the stated purpose of which is to finance residential rental property.

(2) Within 20 days after filing an action under this part to foreclose property that includes or constitutes residential rental property, the plaintiff in the action shall:

(a) post a notice:

(i) on the primary door of each dwelling unit on the property that is the subject of the foreclosure action, if the property has fewer than nine dwelling units; or

(ii) in at least three conspicuous places on the property that is the subject of the foreclosure action, if the property to be sold has nine or more dwelling units; or

(b) mail a notice to the occupant of each dwelling unit on the property that is the subject of the foreclosure action.

(3) The notice required under Subsection (2) shall:

(a) be in at least 14-point font;

(b) include the name and address of:

(i) the owner of the property;

(ii) the trustor or mortgagor, as the case may be, on the instrument creating a security interest in the property;

(iii) the trustee or mortgagee, as the case may be, on the instrument; and

(iv) the beneficiary, if the instrument is a trust deed;

(c) contain the legal description and address of the property; and

(d) include a statement in substantially the following form:

"Notice to Tenant

An action to foreclose the property described in this notice has been filed. If the foreclosure action is pursued to its conclusion, the described property will be sold at public auction to the highest bidder unless the default in the obligation secured by this property is cured.

If the property is sold, you may be allowed under federal law to continue to occupy your rental unit until your rental agreement expires, or until 90 days after the sale of the property at auction, whichever is later. If your rental or lease agreement expires after the 90-day period, you may need to provide a copy of your rental or lease agreement to the new owner to prove your right to remain on the property longer than 90 days after the sale of the property.

You must continue to pay your rent and comply with other requirements of your rental or lease agreement or you will be subject to eviction for violating your rental or lease agreement.

The new owner or the new owner's representative will probably contact you after the property is sold with directions about where to pay rent.

The new owner of the property may or may not want to offer to enter into a new rental or lease agreement with you at the expiration of the period described above."

(4) The failure to provide notice as required under this section or a defect in that notice may not be the basis for challenging or defending a foreclosure action or for invalidating a sale of the property pursuant to a foreclosure action.

**78B-6-902. Deficiency judgment -- Execution.**

If it appears that the proceeds of the sale are insufficient and a balance still remains due, the judgment shall be docketed by the clerk and execution may be issued for the balance as in other cases. A general execution may not be issued until after the sale of the mortgaged property and the application of the amount realized to the preceding judgment.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-903. Necessary parties -- Unrecorded rights barred.**

A person holding a conveyance from or under the mortgagor or having a lien on the property, neither of which is properly documented or recorded in the proper office at the time of the commencement of the action, is not required to be made a party to the action. The proceedings and any judgment rendered are conclusive against the party holding the unrecorded conveyance or lien as if the person had been made a party to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-904. Sales -- Disposition of surplus money.**

If there is surplus money remaining after payment of the amount due on the mortgage, lien or encumbrance, with costs, the court may order the amount paid to the person entitled to it. In the meantime the court may direct it to be deposited with the court.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-905. Sales -- When debt due in installments.**

If the debt for which the mortgage, lien, or encumbrance is held is not all due, then as soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease. As often as more becomes due on principal or interest, the court may, on motion, order more to be sold. If the property cannot be sold in portions without injury to the parties, the entire parcel may be ordered sold and the entire debt and costs paid. There shall be a rebate of interest where a rebate is proper.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-906. Right of redemption -- Sales by parcels -- Of land and water stock.**

(1) Sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in case of sales under executions generally.

(2) In all cases where the judgment directs the sale of land, together with shares of corporate stock evidencing title to a water right used, intended to be used, or suitable for use, on the land, the court shall equitably apportion the water stock to the land. If the court divides the land into individual parcels for sale, the water stock may also be divided and applied to each parcel. The land and water stock in each parcel shall be

sold together, and for the purpose of the sale shall be regarded as real estate and subject to redemption as previously specified.

(3) In all sales of real estate under foreclosure the court may determine the parcels and the order in which the parcels of property shall be sold.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-907. Restraining possessor from injuring property.**

The court or judge may upon a showing of good cause enjoin the party in possession of the property from doing any act to injure the property during the foreclosure of a mortgage on it, or after a sale on execution.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-908. Attorney fees.**

(1) In all cases of foreclosure when an attorney's fee is claimed by the plaintiff, the amount shall be fixed by the court. No other or greater amount shall be allowed or decreed than the sum which shall appear by the evidence to be actually charged by and to be paid to the attorney for the plaintiff.

(2) If it shall appear that there is an agreement or understanding to divide the fees between the plaintiff and his attorney, or between the attorney and any other person except an attorney associated with him in the cause, the defendant shall only be ordered to pay the amount to be retained by the attorney or attorneys.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-909. Environmental impairment to real property security interest -- Remedies of lender.**

(1) As used in this section:

(a) "Borrower" means:

(i) the trustor under a deed of trust, or a mortgagor under a mortgage, when the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation; and

(ii) includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(b) "Environmentally impaired" means the estimated costs to clean up and remediate a past or present release of any hazardous matter into, onto, beneath, or from the real property security exceed 25% of the higher of the aggregate fair market value of all security for the loan or extension of credit at the time:

(i) of the making of the loan or extension of credit;

(ii) of the discovery of the release or threatened release by the secured lender;

or

(iii) an action is brought under this section.

(c) "Hazardous matter" means:

(i) any hazardous substance or hazardous material as defined in Section 19-6-302; or

(ii) any waste or pollutant as defined in Section 19-5-102.

(d) "Real property security" means any real property and improvements other than real property that contains only one but not more than four dwelling units, and is solely used for either:

(i) residential purposes; or

(ii) if reasonably contemplated by the parties to the deed of trust or mortgage, residential purposes as well as limited agricultural or commercial purposes incidental to the residential purposes.

(e) "Release" has the same meaning as in Section 19-6-302.

(f) "Secured lender" means:

(i) the trustee, the beneficiary, or both under a deed of trust against the real property security;

(ii) the mortgagee under a mortgage against the real property security; and

(iii) any successor-in-interest of the trustee, beneficiary, or mortgagee under the deed of trust or mortgage.

(2) Under this section:

(a) Estimated costs to clean up and remediate the contamination caused by the release include only those costs that would be incurred reasonably and in good faith.

(b) Fair market value is determined without giving consideration to the release, and is exclusive of the amount of all liens and encumbrances against the security that are senior in priority to the lien of the secured lender.

(c) Any real property security for any loan or extension of credit secured by a single parcel of real property is considered environmentally impaired if the property is:

(i) included in or proposed for the National Priorities List under Section 42 U.S.C. 9605;

(ii) any list identifying leaking underground storage tanks under 42 U.S.C. 6991 et seq.; or

(iii) in any list published by the Department of Environmental Quality under Section 19-6-311.

(3) A secured lender may elect between the following when the real property security is environmentally impaired and the borrower's obligations to the secured lender are in default:

(a) (i) waiver of its lien against:

(A) any parcel of real property security or any portion of that parcel that is environmentally impaired; and

(B) all or any portion of the fixtures and personal property attached to the parcels; and

(ii) exercise of:

(A) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment; and

(B) any other rights and remedies permitted by law; or

(b) exercise of:

(i) the rights and remedies of a creditor secured by a deed of trust or mortgage and, if applicable, a lien against fixtures or personal property attached to the real

property security; and

(ii) any other rights and remedies permitted by law, including the right to obtain a deficiency judgment.

(c) The provisions of this subsection take precedence over Section 78B-6-901.

(4) (a) Subsection (3) is applicable only if in conjunction with and at the time of the making, renewal, or modification of the loan, extension of credit, guaranty, or other obligation secured by the real property security, the secured lender:

(i) did not know or have reason to know of a release of any hazardous matter into, onto, beneath, or from the real property security; and

(ii) undertook all appropriate inquiry into the previous ownership and uses of the real property security consistent with good commercial or customary practice in an effort to minimize liability.

(b) For the purposes of Subsection (4)(a)(ii), the court shall take into account:

(i) any specialized knowledge or experience of the secured lender;

(ii) the relationship of the purchase price to the value of the real property security if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the real property security;

(iv) the obviousness of the presence or likely presence of contamination at the real property security; and

(v) the ability to detect the contamination by appropriate inspection.

(5) (a) Before the secured lender may waive its lien against any real property security under Subsection (3)(a) on the basis of environmental impairment the secured lender shall:

(i) provide written notice of the default to the borrower; and

(ii) bring a valuation and confirmation action against the borrower in a court of competent jurisdiction and obtain an order establishing the value of the subject real property security.

(b) The complaint in an action under Subsection (5)(a)(ii) may include causes of action for a money judgment for all or part of the secured obligation, in which case the waiver of the secured lender's liens under Subsection (3)(a) may result only if a final money judgment is obtained against the borrower.

(6) (a) If a secured lender elects the rights and remedies under Subsection (3)(a) and the borrower's obligations are also secured by other real property security, fixtures, or personal property, the secured lender shall first foreclose against the additional collateral to the extent required by applicable law.

(b) Under this subsection the amount of the judgment of the secured lender under Subsection (3)(a) is limited to the remaining balance of the borrower's obligations after the application of the proceeds of the additional collateral.

(c) The borrower may waive or modify the foreclosure requirements of this Subsection (6) if the waiver or modification is in writing and signed by the borrower after default.

(7) This section does not affect any rights or obligations arising under contracts existing before July 1, 1993, and applies only to loans, extensions of credit, guaranties, or other obligations secured by real property security made, renewed, or modified on or after July 1, 1993.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1001. Right of action for waste -- Damages.**

If a guardian, tenant for life or years, joint tenant, or tenant in common, of real property commits waste on the property, any person aggrieved by the waste may bring an action against the person. Judgment in the action may include treble damages.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1002. Right of action for injuries to trees -- Damage.**

Any person who without authority cuts down or carries off any wood or underwood, tree or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, town or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front, without lawful authority, is liable to the owner of such land, or to the city or town, for treble the amount of damages which may be assessed in a civil action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1003. Limited damages in certain cases.**

Nothing in Section 78B-6-1002 authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land, or adjoining it.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1101. Definitions -- Nuisance -- Right of action.**

(1) A nuisance is anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. A nuisance may be the subject of an action.

(2) A nuisance may include the following:

(a) drug houses and drug dealing as provided in Section 78B-6-1107;  
(b) gambling as provided in Title 76, Chapter 10, Part 11;  
(c) criminal activity committed in concert with two or more persons as provided in Section 76-3-203.1;

(d) criminal activity committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;

(e) criminal activity committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(f) party houses which frequently create conditions defined in Subsection (1);  
and

(g) prostitution as provided in Title 76, Chapter 10, Part 13.

(3) A nuisance under this part includes tobacco smoke that drifts into any residential unit a person rents, leases, or owns, from another residential or commercial

unit and the smoke:

(a) drifts in more than once in each of two or more consecutive seven-day periods; and

(b) creates any of the conditions under Subsection (1).

(4) Subsection (3) does not apply to:

(a) residential rental units available for temporary rental, such as for vacations, or available for only 30 or fewer days at a time; or

(b) hotel or motel rooms.

(5) Subsection (3) does not apply to any unit that is part of a timeshare development, as defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.

(6) An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

(7) "Agricultural operation" means any activity engaged in the commercial production of crops, orchards, aquaculture, livestock, poultry, livestock products, poultry products, and the facilities, equipment, and property used to facilitate the activity.

(8) "Manufacturing facility" means any factory, plant, or other facility including its appurtenances, where the form of raw materials, processed materials, commodities, or other physical objects is converted or otherwise changed into other materials, commodities, or physical objects or where such materials, commodities, or physical objects are combined to form a new material, commodity, or physical object.

Amended by Chapter 193, 2010 General Session

**78B-6-1102. Action.**

(1) An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

(2) Upon judgment, the nuisance may be enjoined or abated, and damages may be recovered.

Enacted by Chapter 3, 2008 General Session

**78B-6-1102.5. Violation of order enjoining a nuisance.**

A person who knowingly violates any judgment or order abating or otherwise enjoining a nuisance as defined under Section 78B-6-1101 is guilty of a class B misdemeanor.

Enacted by Chapter 99, 2010 General Session

**78B-6-1103. Manufacturing facility in operation over three years -- Limited application of restrictions.**

(1) Notwithstanding Sections 76-10-803 and 78B-6-1101, a manufacturing facility or operation may not be considered a nuisance, private or public, by virtue of any changed circumstance in land uses near the facility after it has been in operation for more than three years if the manufacturing facility or operation was not a nuisance at the time it began operation. The manufacturing facility may not increase the condition

asserted to be a nuisance. The provisions of this Subsection (1) do not apply if a nuisance results from the negligent or improper operation of a manufacturing facility.

(2) The provisions of Subsection (1) may not affect or defeat the right of any person to recover damages for any injuries or damage sustained because of any pollution of, or change in the condition of, the waters of any stream or the overflow of the lands of any person.

(3) Any and all ordinances now or in the future adopted by any county or municipal corporation in which a manufacturing facility is located and which makes its operation a nuisance or providing for an abatement as a nuisance in the circumstances set forth in this section are null and void. The provisions of this Subsection (3) may not apply whenever a nuisance results from the negligent or improper operation of a manufacturing facility.

Amended by Chapter 185, 2011 General Session

**78B-6-1104. Agricultural operations -- Nuisance liability.**

(1) Activities conducted in the normal and ordinary course of agricultural operations or conducted in accordance with sound agricultural practices are presumed to be reasonable and not constitute a nuisance.

(2) Agricultural operations undertaken in conformity with federal, state, and local laws and regulations, including zoning ordinances, are presumed to be operating within sound agricultural practices.

Amended by Chapter 21, 2009 General Session

**78B-6-1105. Tobacco smoke -- Legislative intent.**

(1) The Legislature finds:

(a) the federal Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Group A carcinogen, in the same category as other cancer-causing chemicals such as asbestos;

(b) the EPA has determined that there is no acceptable level of exposure to Class A carcinogens; and

(c) the EPA has determined that exposure to environmental tobacco smoke also causes an increase in respiratory diseases and disorders among exposed persons.

(2) The Legislature finds that environmental tobacco smoke generated in a rental or condominium unit may drift into other units, exposing the occupants of those units to tobacco smoke, and that standard construction practices are not effective in preventing this drift of tobacco smoke.

(3) The Legislature further finds that persons who desire to not be exposed to drifting environmental tobacco smoke should be able to determine in advance of entering into a rental, lease, or purchase agreement whether the subject unit may be exposed to environmental tobacco smoke.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1106. Rental units -- Tobacco smoke.**

(1) There is no cause of action for a nuisance under Subsection 78B-6-1101(3) if the rental, lease, restrictive covenant, or purchase agreement for the unit states in writing that:

(a) smoking is allowed in other units, either residential or commercial, and that tobacco smoke from those units may drift into the unit that is subject to the agreement; and

(b) by signing the agreement the renter, lessee, or buyer acknowledges he has been informed that tobacco smoke may drift into the unit he is renting, leasing, or purchasing, and he waives any right to a cause of action for a nuisance under Subsection 78B-6-1101(3).

(2) A cause of action for a nuisance under Subsection 78B-6-1101(3) may be brought against:

(a) the individual generating the tobacco smoke;

(b) the renter or lessee who permits or fails to control the generation of tobacco smoke, in violation of the terms of the rental or lease agreement, on the premises he rents or leases; or

(c) the landlord, but only if:

(i) the terms of the renter's or lessee's contract provide the unit will not be subject to the nuisance of drifting tobacco smoke;

(ii) the complaining renter or lessee has provided to the landlord a statement in writing indicating that tobacco smoke is creating a nuisance in the renter's or lessee's unit; and

(iii) the landlord knowingly allows the continuation of a nuisance under Subsection 78B-6-1101(3) after receipt of written notice under Subsection (2)(c)(ii), and in violation of the terms of the rental or lease agreement under Subsection (2)(c)(i).

Enacted by Chapter 3, 2008 General Session

**78B-6-1107. Nuisance -- Drug houses and drug dealing -- Gambling -- Group criminal activity -- Party house -- Prostitution -- Weapons -- Abatement by eviction.**

(1) Every building or place is a nuisance where:

(a) the unlawful sale, manufacture, service, storage, distribution, dispensing, or acquisition occurs of any controlled substance, precursor, or analog specified in Title 58, Chapter 37, Utah Controlled Substances Act;

(b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as defined in Subsection 78B-6-1101(1);

(c) criminal activity is committed in concert with two or more persons as provided in Section 76-3-203.1;

(d) criminal activity is committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;

(e) criminal activity is committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(f) parties occur frequently which create the conditions of a nuisance as defined in Subsection 78B-6-1101(1);

(g) prostitution or promotion of prostitution is regularly carried on by one or more persons as provided in Title 76, Chapter 10, Part 13, Prostitution; and

(h) a violation of Title 76, Chapter 10, Part 5, Weapons, occurs on the premises.

(2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that the defendant is lawfully entitled to possession of a controlled substance.

(3) Sections 78B-6-1108 through 78B-6-1114 govern only an abatement by eviction of the nuisance as defined in Subsection (1).

Amended by Chapter 193, 2010 General Session

**78B-6-1108. Nuisance -- Abatement by eviction.**

(1) Whenever there is reason to believe that a nuisance under Sections 78B-6-1107 through 78B-6-1114 is kept, maintained, or exists in any county, the county attorney of the county, the city attorney of any incorporated city, any citizen or citizens of the state residing in the county, or any corporation, partnership or business doing business in the county, in his or their own names, may maintain an action in a court of competent jurisdiction to abate the nuisance and obtain an order for the automatic eviction of the tenant.

(2) The court may designate a spokesperson of any group of citizens who would otherwise have the right to maintain an action in their individual names against the defendant under this section.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1109. Abatement by eviction order -- Grounds.**

An order of abatement by eviction may issue only upon a showing by the applicant by a preponderance of the evidence that:

(1) the applicant will suffer irreparable harm unless the order of abatement by eviction issues;

(2) the threatened injury to the applicant outweighs whatever damage the proposed order of abatement by eviction may cause the party so ordered;

(3) the order of abatement by eviction, if issued, would not be adverse to the public interest; and

(4) there is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1110. Prior acts or threats of violence -- Protection of witnesses.**

At the time of application for abatement of the nuisance by eviction pursuant to Sections 78B-6-1108 and 78B-6-1109, if proof of the existence of the nuisance depends, in whole or in part, upon the affidavits of witnesses who are not peace officers, upon a showing of prior threats of violence or acts of violence by any defendant or other person, the court may issue orders to protect those witnesses, including, nondisclosure of the name, address, or any other information which may

identify those witnesses.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1111. Landlord, owner, or designated agent -- Necessary party -- Automatic eviction.**

(1) A landlord, owner, or designated agent is a necessary party defendant in a nuisance action under Sections 78B-6-1107 through 78B-6-1114 for entry of an order to abate the nuisance by eviction where the acts complained of are those of third parties upon the premises of the landlord, owner, or designated agent.

(2) In the presence of the applicant, the tenant and the landlord, owner, or designated agent at the court's hearing on the action to abate the nuisance by eviction, the court shall notify the necessary parties of its finding that:

(a) a nuisance exists as defined in Section 78B-6-1107; and

(b) as a result, the court is issuing an order to evict the tenant subject to compliance with the security requirement in Section 78B-6-1112.

(3) In all cases, including default judgments, the order of abatement by eviction may be issued and enforced immediately.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1112. Security requirement -- Amount not a limitation -- Jurisdiction over surety.**

(1) The court shall condition issuance of the order of abatement by eviction on the giving of security by the applicant, in such sum and form as the court determines proper, unless it appears that none of the parties will incur or suffer costs, attorney fees, or damage as the result of any wrongful order of abatement by eviction, or unless there exists some other substantial reason for dispensing with the requirement of security. No such security shall be required of the United States, the State of Utah, or of an officer, agency, or subdivision of either; nor shall it be required when it is prohibited by law.

(2) The amount of security shall not establish or limit the amount of costs, including reasonable attorney fees incurred in connection with the order of abatement by eviction, or damages that may be awarded to a party who is found to have been wrongfully evicted.

(3) A surety upon a bond or undertaking under this section submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall immediately mail copies to the persons giving the security if their addresses are known.

(4) The plaintiff, upon demand, shall be granted a hearing to be held prior to the expiration of three days from the date the defendant is served with notice of the plaintiff's giving of security as provided in Subsection 78B-6-1112(1).

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1113. Evidence of nuisance.**

In any action for abatement by eviction instituted pursuant to Sections 78B-6-1107 through 78B-6-1114, all evidence otherwise authorized by law, including evidence of reputation in a community, is admissible to prove the existence of a nuisance by a preponderance of the evidence.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1114. Award of costs and attorney fees.**

(1) The court may award costs, including the costs of investigation and discovery, and reasonable attorney fees, which are not compensated for pursuant to some other provision of law, to the prevailing party in any case in which a governmental agency, private citizen or citizens, corporation, partnership, or business seeks to abate the nuisance by eviction in or upon any building or place where the nuisance occurs as provided in Section 78B-6-1107.

(2) The court may award costs, including the costs of investigation and discovery, and reasonable attorney fees against a defendant landlord, owner, or designated agent only when the court finds that the defendant landlord, owner, or designated agent had actual notice of the nuisance action and willfully failed to take reasonable action within a reasonable time to abate the nuisance.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1201. Partition -- By cotenants of real property.**

A person who is a joint tenant or tenant in common with another of real property may bring an action to partition the property for the benefit of each tenant. An action for partition may require the sale of the property if it appears that the partition cannot be made without prejudice to the owners.

Enacted by Chapter 3, 2008 General Session

**78B-6-1202. Complaint -- To set forth interests of all parties.**

(1) The interests of all persons in the property, whether the persons are known or unknown, shall be set forth in the complaint, specifically and particularly, as far as known to the plaintiff.

(2) If one or more of the parties, or the share or quantity of interest of any of the parties, is unknown to the plaintiff, uncertain or contingent, or the ownership of the inheritance depends upon an executory devise, or the remainder is a contingent remainder making the parties unknown, that fact must be set forth in the complaint.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1203. Parties -- Only holders of recorded rights necessary.**

A person who does not have a conveyance of, or claim a lien on, the property, or

some part of it, is not required to be made a party to the action, unless the conveyance or lien has been properly recorded.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1204. Lis pendens required.**

(1) The plaintiff shall file a notice of the action with the recorders of all the counties in which the property is situated. The notice shall contain:

- (a) a copy of such complaint; or
- (b) a notice of the pendency of the action, containing:
  - (i) the names of all known parties;
  - (ii) the object of the action; and
  - (iii) a description of the property affected.

(2) Once the notice is filed, all persons having an interest in the property shall be considered to have notice of the pendency of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1205. Summons -- To whom directed.**

The summons shall be directed to:

- (1) all joint tenants;
- (2) tenants in common of all persons having any interest in, or recorded liens upon the property or any portion of the property; and
- (3) any other person claiming any interest in the property.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1206. Service by publication.**

If a party having a share or interest is unknown, or any one of the known parties resides out of the state or cannot be found, the summons may be served upon them by publication in accordance with the Utah Rules of Civil Procedure.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1207. Answer must set forth interests claimed.**

(1) All defendants shall set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property.

(2) If a defendant claims a lien on the property by mortgage, judgment, or otherwise, the defendant shall state the original amount and date of the mortgage or judgment, and the amounts remaining unpaid. The defendant shall also state whether the mortgage or judgment has been secured in any other way, and if secured, the extent and nature of the security. If this information is not provided, the defendant shall be considered to have waived any rights to the lien.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1208. Right of all parties may be determined.**

The rights of all parties may be put in issue, tried, and determined by the action. If the court determines a sale of the premises is necessary, the title shall be ascertained to the satisfaction of the court before the judgment of sale can be made. If service of the summons was made by publication, similar proof is required concerning the rights of absent or unknown parties before judgment is rendered. If there are several unknown persons having an interest in the property, their rights may be considered together in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1209. Partial partition allowed -- When.**

(1) If the court determines that it is impracticable or highly inconvenient to make a complete partition among all the parties in interest, the court may first determine the shares or interests respectively held by the original cotenants as if they were the only parties to the action.

(2) After the initial partition, the court may partition separately each portion allotted among those claiming under a specific tenant whose interest was determined in Subsection (1), unless the parties choose to remain as tenants in common.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1210. When all holders of recorded rights are not made parties -- Procedure -- Reference.**

If there are outstanding liens or encumbrances of record upon the property when the action is commenced, the persons holding the liens shall be made parties to the action. If the persons are not made parties, the court shall either order the persons made parties to the action by an amendment or supplemental complaint, or appoint a referee to determine whether the liens or encumbrances have been paid. If the referee determines that amounts remain due, the referee shall determine whether the amounts are secured or unsecured and the order of precedence among all the liens or encumbrances on the property.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1211. Notice of appearance before referee -- Referee's report.**

(1) The referee appointed in Section 78B-6-1210 shall set a date to hear from each person holding a lien on the property. The plaintiff shall have a notice and summons served on each person identified in Section 78B-6-1210 who is not a party to the action.

(2) The summons shall state the specific time and place of the hearing and instruct the person to appear with proof of all amounts due.

(3) If the person cannot be found, the court may direct service to be made by publication in accordance with the Utah Rules of Civil Procedure.

(4) The referee shall provide a report to the court detailing his findings. The court shall confirm, modify, or set aside the findings. If the findings are set aside, a new

referee may be appointed in accordance with Section 78B-6-1210.

Enacted by Chapter 3, 2008 General Session

**78B-6-1212. If partition prejudicial, sale in lieu thereof -- Partition by referees.**

(1) If the court determines that the property or any part of it cannot be partitioned without great prejudice to the owners, the court may order the property sold.

(2) If the court determines that the property may be partitioned, it shall order a partition according to the respective rights of the parties determined by the court and appoint three referees to do the partition. The court shall also designate a portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

(3) If the action is for partition of a mining claim among the tenants in common, joint tenants, copartners, or parceners, the court, upon good cause shown by any party or parties in interest, may, instead of ordering partition to be made in the manner as provided, or a sale of the premises for cash, direct the referees to divide the claim in the manner provided in Subsections 78B-6-1213(5) through (11).

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1213. Duties and powers of referees -- Procedure.**

(1) In making the partition the referees must divide the property among the respective parties as determined by the court pursuant to the provisions of this part.

(2) The referees may designate the portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them.

(3) In all cases the court shall direct the referees making the partition to:

(a) allot the share of each of the parties owning an interest; and

(b) locate the share of each cotenant, including, if possible, the improvements made by the cotenant upon the property.

(4) The value of the improvements made by tenants in common shall be excluded from the valuation in making allotments if it can be done without material injury to the rights and interests of the other tenants in common.

(5) If the action is for partition of a mining claim, the court shall order the division of the claim by the referees not less than 20 nor more than 40 days from the date of the order, except by consent of all the parties in interest who have appeared in the action.

(6) On the day designated in the order the referees shall go to the property to be divided and proceed to divide the property. If the division requires more than one day to complete, the referees shall continue from day to day until the division is completed.

(7) Two or more of the tenants in common, joint tenants, copartners, or parceners may unite for the purposes of the division. The parties shall give the referees written notice of any unions before the referees begin the division. All who do not unite or give notice of separate action, shall, for the purposes of division, be considered to have united.

(8) The referees shall recognize:

(a) those named in the court order, their agents and attorneys;

(b) a guardian of a minor; and  
(c) a guardian entitled to the custody and the management of the estate of an incompetent or incapacitated person.

(9) At the time and place of division one of the referees shall be selected to conduct the proceedings in the manner of public auction. The privilege of selecting first shall be offered to the party who agrees to take the smallest portion of the claim in proportion to that party's interest in the claim. Once the bids are closed, the referees shall measure and mark off, by distinct metes and bounds, the portion of the claim designated by the lowest bidder.

(10) Once the referees have marked off and set apart the interest of the lowest bidder, they shall offer to the remaining parties the privilege of selection as provided, and shall upon closing the bids, proceed in the same manner to locate and mark off the portion of the lowest bidder.

(11) The bidding shall continue and the interest of the lowest bidder marked off until only one party in interest remains. The party remaining shall become the owner of the remainder of the claim not marked off and set apart for the other parties.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1214. Report of referees.**

The referees shall provide a written report of their proceedings, specifying the manner in which they executed their trust, describing the property divided, and the shares allotted to each party, with a particular description of each share.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1215. Confirmation, modification, or vacation by court -- Effect of death of party before judgment.**

(1) The court may confirm, change, modify, or set aside the report, and if necessary, appoint new referees. Upon the report being confirmed judgment must be rendered that the partition be effectual forever. The judgment shall be binding and conclusive on all persons:

(a) named as parties to the action and their legal representatives, who have at the time any interest in the property, whether as:

(i) owners in fee;  
(ii) tenants for life or for years; or  
(iii) entitled to the reversion, remainder, or the inheritance of the property or of any portion after the determination of a particular estate in it;

(b) who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life;

(c) interested in the property who may be unknown, to whom notice of the action for partition has been given by publications; and

(d) claiming from any parties or persons in Subsection (1)(c).

(2) A judgment is not invalid by reason of the death of any party before final judgment or decree, but the judgment or decree is as conclusive against the heirs, legal

representatives, or assigns of the decedent as if it had been entered before the person's death.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1216. Tenant for years, less than 10, not affected by judgment.**

The judgment does not affect tenants for years, less than 10, of the whole of the property which is the subject of the partition.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1217. Referees' expenses and fees -- Apportionment.**

The expenses of the referees, including those of the surveyor and his assistants if employed, must be determined and allowed by the court, and the amount, together with the fees allowed by the court in its discretion to the referees, shall be apportioned equitably among the different parties to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1218. Liens on undivided interests -- Apportionment.**

A lien on an undivided interest or estate of any of the parties shall only be a charge on the share assigned to the party after the share is charged with its just proportion of the costs of the partition in preference to the lien.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1219. Setoff of estate for life or for years.**

If there is an estate for life or years in an undivided share of the whole property and only a portion of the property is ordered to be sold, the estate may be set off in any part of the property not ordered to be sold.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1220. Proceeds of sale of encumbered property -- Disposition of.**

The proceeds of the sale of encumbered property shall be applied under the direction of the court, as follows:

- (1) to pay its just proportion of the general costs of the action;
- (2) to pay the costs of the reference;
- (3) to satisfy and cancel all recorded liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment;
- (4) the residue among the owners of the property sold according to their respective shares therein.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1221. Lienholders required to exhaust other security first.**

Any party to the action, who holds a lien upon the property or any portion of it and has other securities for the payment of the amount of the lien may be required by the court to exhaust the other securities before a distribution of the proceeds of sale. The court may also order a just reduction to be made from the amount of the lien on the property in the amount of the securities.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1222. Distribution of proceeds or securities.**

The proceeds of sale and the securities taken by the referees shall be distributed by the referees to the persons entitled to them whenever the court directs. If no direction for distribution is given, all of the proceeds and securities must be paid into the court.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1223. Determination of adverse claims.**

When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known or unknown, are paid into court, the action may continue between the parties for the determination of their respective claims. Further evidence may be taken by the court or a referee at the discretion of the court, and the court may, if necessary, require the parties to present the facts or law in controversy by pleadings as in an original action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1224. Sales at public auction -- Notice.**

All sales of real property made by referees under this part shall be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that fact shall be stated also.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1225. Sales on credit -- Order for.**

The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises. For that portion of which the purchase money is required, the court shall also order it to be invested for the benefit of unknown owners, minors or parties out of the state.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1226. Security for payment.**

The referees may take separate mortgages and other securities;

- (1) for the whole or convenient portions of the purchase money;
- (2) on any part of the property directed by the court to be sold on credit;
- (3) for the shares of any known owner of full age, in the name of the owner;
- (4) for the shares of a minor, in the name of the guardian of the minor; and
- (5) for other shares, in the name of the clerk of the court and his successors in office.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1227. Compensation for interest of tenant for life or years.**

A person entitled to a tenancy for life or years whose estate has been sold, is entitled to receive a sum as reasonable compensation for the estate. The person's consent to accept the sum shall be filed in writing with the clerk of the court. Upon the filing of the consent, the clerk shall enter it in the minutes of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1228. Court determines reasonable compensation for tenant.**

If consent is not given, filed, and entered as provided in Section 78B-6-1227 before a judgment of sale is rendered, the court shall determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of the estate, and order the amount paid to the party, or deposited in the court for the person, as the case may require.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1229. If tenant unknown.**

If persons entitled to the estate for life or years are unknown, the court shall provide for the protection of their rights in the same manner as if they were known and had appeared.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1230. Protection of vested, contingent, or future rights.**

In all cases of sales if it appears that any person has a vested, contingent, or future right or estate in any of the property sold, the court shall ascertain and settle the proportionate value of the contingent or vested right or estate, and direct the proportion of the proceeds of the sale to be invested, secured, or paid over in a manner that would protect the rights and interests of the parties.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1231. Terms of sales -- Separate sale of distinct parcels.**

In all cases of sales of property the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1232. Who may not be purchaser.**

- (1) A referee or any person for the referee's benefit may not be interested in any purchase.
- (2) A guardian of a minor party may not be interested in the purchase of any real property which is the subject of an action under this part except for the benefit of the minor.
- (3) All sales contrary to the provisions of this section are void.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1233. Report of referees to the courts of sales.**

- (1) Once the sale of the property or any portion ordered to be sold is complete, the referees shall file a report with the court.
- (2) The report shall include:
  - (a) a description of the different parcels of land sold to each purchaser;
  - (b) the name of the purchaser;
  - (c) the price paid or secured;
  - (d) the terms and conditions of the sale; and
  - (e) the securities, if any, taken.
- (3) The report shall be filed in the office of the clerk of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1234. Referees' deed on confirmation -- Disposition of proceeds.**

If the sale is confirmed by the court, an order shall be entered directing the referees to execute conveyances and authorizing them to take securities pursuant to sale. The order may also give directions directing the disposition of the proceeds of the sale.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1235. Allowance on purchase price -- When interested party is purchaser.**

If a party entitled to a share of the property, or a lienholder entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1236. Conveyance to be recorded -- Operates as a bar.**

- (1) The conveyances shall be recorded in the county where the property is located.
- (2) The recording shall be a bar against:
  - (a) all persons interested in the property in any way, who have been named as

parties in the action;

(b) all parties or persons who were unknown, if the summons was served by publication, and all persons claiming under them; and

(c) all persons having unrecorded deeds or liens at the commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1237. Investment of sale proceeds for nonresidents or unknown parties.**

When there are proceeds of a sale belonging to an unknown owner or to a person outside the state who has no legal representative inside the state, the proceeds shall be invested in bonds of the United States, this state, or a political subdivision of the state for the benefit of the persons entitled the proceeds.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1238. Clerk of court to be custodian.**

If the security of the proceeds of the sale is taken, or when an investment of any proceeds is made, it shall be done, except as otherwise provided, in the name of the clerk of the district court. The clerk of the court shall hold the security for the use and benefit of the parties interested, subject to an order of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1239. Distribution of securities to parties entitled.**

If security is taken by the referees on a sale, and the parties interested in the security, by an instrument in writing delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, the securities shall be taken in the names of, and payable to, the parties respectively entitled, and shall be delivered to the parties upon their receipt. The agreement and receipt shall be filed with the clerk of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1240. Investment of securities by court clerk -- Accounting.**

The clerk of the court in whose name a security is taken or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct. The clerk shall also deposit with the county treasurer all securities taken, and keep an account, in a book provided and kept for that purpose in the clerk's office, free to inspection by all persons, of investments and money received and their disposition.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1241. Equalization.**

(1) If a partition cannot be made equally among the parties according to their respective rights without prejudice to the rights and interests of some of them, and a partition is ordered, the courts may order compensation made by one party to another on account of the inequality.

(2) Compensation may not be required to be made to others by unknown owners or a minor, unless the court determines that the minor has sufficient personal property to make the payment and the minor's and the minor's interest will not be negatively affected.

(3) The court has the power in all cases to make compensatory adjustment among the parties according to the principles of equity.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1242. Interests of minor -- Payment to guardian.**

If the share of a minor is sold, the court may order the proceeds of the sale to be paid by the referee making the sale to the minor's general guardian or to the special guardian appointed for the minor in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1243. Partition -- Payment of costs -- Enforcement of judgment.**

(1) The costs of partition, including reasonable attorney fees, expended by the plaintiff or any of the defendants for the common benefit, fees of referees and other disbursements shall be paid by the parties entitled to share in the lands divided, in proportion to their respective interests, and may be included and specified in the judgment. The costs shall be a lien on the several shares, and the judgment may be enforced by execution against the shares and against other property held by the respective parties.

(2) If litigation arises between some of the parties, the court may require the expenses of the litigation to be paid by the parties to the litigation.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1244. One referee instead of three allowed by consent.**

The court, with the consent of the parties, may appoint a single referee instead of three referees in the proceedings under the provisions of this part, and the single referee has all the powers, and may perform all the duties, required of the three referees.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1245. Lien for costs and expenses advanced by one for benefit of all.**

(1) The court shall allow expenses incurred, including attorney fees, in prosecuting or defending other actions or proceedings by any one of the tenants in common for the protection, confirmation or perfecting of the title, or setting the

boundaries, or making a survey or surveys of the estate partitioned to be recovered by the party incurring the expenses.

(2) The court shall determine the amounts with interest from the date the expenditures occurred.

(3) The costs shall be:

(a) pleaded and allowed by the court;

(b) included in the final judgment;

(c) a lien upon the share of each tenant, in proportion to the tenant's interest; and

(d) enforced in the same manner as taxable costs of partition are taxed and collected.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1246. Abstract of title -- Costs and inspection.**

(1) If the court determines that it was necessary to have an abstract of the title to the property to be partitioned created and the abstract has been procured by a party to the proceeding, the cost of the abstract, with interest from the date of its creation and availability for inspection by the respective parties to the action, shall be allowed and taxed.

(2) If the abstract is procured by the plaintiff before the commencement of the action the plaintiff shall file a notice with the complaint that an abstract of the title has been made and is available for the inspection and use of all the parties to the action. The notice shall state where the abstract will be available for inspection.

(3) If the plaintiff did not procure an abstract before commencing the action, and a defendant procures an abstract, the defendant shall, as soon as it has been directed it to be made, file a notice in the action with the clerk of the court, stating who is making the abstract and where it will be kept when finished.

(4) The court may direct who may have custody of the abstract.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1247. Interest on advances to be allowed.**

Any disbursement made by a party under the direction of the court during the action shall accrue interest from the date it is made.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1301. Quiet title -- Action to determine adverse claim to property.**

A person may bring an action against another person to determine rights, interests, or claims to or in personal or real property.

Enacted by Chapter 3, 2008 General Session

**78B-6-1302. Definitions.**

As used in this part:

- (1) "Claimant" means a person who files a notice.
- (2) "Guarantee" means an agreement by a claimant to pay an amount of damages:
  - (a) specified by the court;
  - (b) suffered as a result of the maintenance of a notice;
  - (c) to a person with an interest in the real property that is the subject of the notice; and
  - (d) if the requirements of Subsection 78B-6-1304(5) are met.
- (3) "Notice" means a notice of the pendency of an action filed under Section 78B-6-1303.

Enacted by Chapter 3, 2008 General Session

**78B-6-1303. Lis pendens -- Notice.**

- (1) Either party to an action affecting the title to, or the right of possession of, real property may file a notice of the pendency of the action with the county recorder in the county where the property or any portion of the property is located.
- (2) The notice shall contain:
  - (a) the names of the parties;
  - (b) the object of the action or defense; and
  - (c) a description of the property affected in that county.
- (3) From the time of filing the notice, a purchaser or encumbrancer of the property who may be affected by the action is considered to have constructive notice of the pendency of the action.

Enacted by Chapter 3, 2008 General Session

**78B-6-1304. Motions related to a notice of the pendency of an action.**

- (1) Any time after a notice has been recorded pursuant to Section 78B-6-1303, any of the following may make a motion to the court in which the action is pending to release the notice:
  - (a) a party to the action; or
  - (b) a person with an interest in the real property affected by the notice.
- (2) A court shall order a notice released if:
  - (a) the court receives a motion to release under Subsection (1); and
  - (b) the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim that is the subject of the notice.
- (3) If a court releases a notice pursuant to this section, the claimant may not record another notice with respect to the same property without approval of the court in which the action is pending.
- (4) Upon a motion by any person with an interest in the real property that is the subject of a notice, a court may require the claimant to give the moving party a guarantee as a condition of maintaining the notice:
  - (a) any time after a notice has been recorded; and
  - (b) regardless of whether the court has received an application to release under

Subsection (1).

(5) A person who receives a guarantee under Subsection (4) may recover an amount not to exceed the amount of the guarantee upon a showing that:

(a) the claimant did not prevail on the real property claim; and  
(b) the person seeking the guarantee suffered damages as a result of the maintenance of the notice.

(6) A court shall award costs and attorney fees to a prevailing party on any motion under this section unless the court finds that:

(a) the nonprevailing party acted with substantial justification; or  
(b) other circumstances make the imposition of attorney fees and costs unjust.

Enacted by Chapter 3, 2008 General Session

**78B-6-1305. Disclaimer or default by defendant -- Costs.**

The plaintiff may not recover costs of the action if:

(1) the defendant disclaims in his answer any interest or estate in the property;  
or  
(2) allows judgment to be taken against him by refusing to answer.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1306. Termination of title pending action -- Judgment -- Damages.**

If the plaintiff demonstrates a right to recover at the time the action is brought, but his right terminates during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1307. Setoff or counterclaim for improvements made.**

If permanent improvements have been made by a defendant, or persons under whom the defendant claims in good faith, the value of the improvements, except improvements made upon mining property, shall be allowed as a setoff or counterclaim against the damages recovered for withholding the property.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1308. Right of entry pending action for purposes of action.**

The court in which an action is pending under this part or for damages for an injury to property may, on motion and upon notice to either party, for good cause shown, issue an order allowing a party the right to enter the property and take surveys and measurements including any tunnels, shafts, or drifts, even though entry must be made through other lands belonging to parties to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1309. Order for entry -- Liability for injuries.**

The order shall describe the property, and a copy served on the owner or occupant. The party may enter the property with necessary surveyors and assistants, and may take surveys and measurements. The party shall be liable for any unnecessary injury done to the property.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1310. Mortgage not considered a conveyance -- Foreclosure necessary.**

A mortgage of real property may not be considered a conveyance which would enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1311. Alienation pending action not to prejudice recovery.**

An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by the person, either before or after the commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1312. Actions respecting mining claims -- Proof of customs and usage admissible.**

In actions respecting mining claims proof must be admitted of the customs, usages, or regulations established and in force in the district, bar, diggings, or camp in which the claim is located. The customs, usages, or regulations, if not in conflict with the laws of this state or of the United States, shall govern any decision in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1313. Temporary injunction in actions involving title to mining claims.**

- (1) The court may grant a postponement if:
  - (a) the court is satisfied that the delay is necessary for either or both parties to adequately prepare for trial; and
  - (b) the party requesting the postponement is not guilty of laches and is acting in good faith.
- (2) The court may provide, as part of its order, that the party obtaining the postponement may not remove from the property which is the subject of the action any valuable quartz, rock, earth, or ores. The court may vacate the postponement order or hold the party in contempt if the order is violated.

Enacted by Chapter 3, 2008 General Session

**78B-6-1314. Service of summons and conclusiveness of judgment.**

If service of process is made upon unknown defendants by publication, the action shall proceed against the unknown persons in the same manner as against the defendants who are named and upon whom service is made by publication. Any unknown person who has or claims to have any right, title, estate, lien, or interest in the property, which is a cloud on the title and adverse to the plaintiff, who has been served as above, and anyone claiming under him, shall be concluded by any judgment in the action even though the unknown person may be under a legal disability.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1315. Judgment on default -- Court must require evidence -- Conclusiveness of judgment.**

(1) If the summons has been served and the time for answering has expired, the court shall proceed to hear the cause as in other cases.

(2) The court may examine and determine the legality of the plaintiff's title and the title and claims of all the defendants and all unknown persons.

(3) The court may not enter any judgment by default against unknown defendants, but in all cases shall require evidence of plaintiff's title and possession and hear the evidence offered respecting the claims and title of any of the defendants. The court may enter judgment in accordance with the evidence and the law only after hearing all the evidence.

(4) The judgment shall be conclusive against all the persons named in the summons and complaint who have been served and against all unknown persons as stated in the complaint and summons who have been served by publication.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1401. Title.**

This part is known as the "Citizen Participation in Government Act."

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1402. Definitions.**

As used in this part:

(1) "Action involving public participation in the process of government" means any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief to which this act applies.

(2) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority.

(3) "Moving party" means any person on whose behalf the motion is filed.

(4) "Process of government" means the mechanisms and procedures by which the legislative and executive branches of government make decisions, and the activities leading up to the decisions, including the exercise by a citizen of the right to influence those decisions under the First Amendment to the U.S. Constitution.

(5) "Responding party" means any person against whom the motion described in Section 78B-6-1403 is filed.

Amended by Chapter 254, 2010 General Session

**78B-6-1403. Applicability.**

(1) A defendant in an action who believes that the action is primarily based on, relates to, or is in response to an act of the defendant while participating in the process of government and is done primarily to harass the defendant, may file:

(a) an answer supported by an affidavit of the defendant detailing his belief that the action is designed to prevent, interfere with, or chill public participation in the process of government, and specifying in detail the conduct asserted to be the participation in the process of government believed to give rise to the complaint; and

(b) a motion for judgment on the pleadings in accordance with the Utah Rules of Civil Procedure Rule 12(c).

(2) Affidavits detailing activity not adequately detailed in the answer may be filed with the motion.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1404. Procedures.**

(1) On the filing of a motion for judgment on the pleadings:

(a) all discovery shall be stayed pending resolution of the motion unless the court orders otherwise;

(b) the trial court shall hear and determine the motion as expeditiously as possible with the moving party providing by clear and convincing evidence that the primary reason for the filing of the complaint was to interfere with the first amendment right of the defendant; and

(c) the moving party shall have a right to seek interlocutory appeal from a trial court order denying the motion or from a trial court failure to rule on the motion in expedited fashion.

(2) The court shall grant the motion and dismiss the action upon a finding that the primary purpose of the action is to prevent, interfere with, or chill the moving party's proper participation in the process of government.

(3) Any government body to which the moving party's acts were directed or the attorney general may intervene to defend or otherwise support the moving party.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1405. Counter actions -- Attorney fees -- Damages.**

(1) A defendant in an action involving public participation in the process of government may maintain an action, claim, cross-claim, or counterclaim to recover:

(a) costs and reasonable attorney fees, upon a demonstration that the action involving public participation in the process of government was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification, or reversal of existing law; and

(b) other compensatory damages upon an additional demonstration that the action involving public participation in the process of government was commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of rights granted under the First Amendment to the U.S. Constitution.

(2) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1501. Title.**

This part is known as the "Structured Settlement Protection Act."

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1502. Definitions.**

For purposes of this part:

(1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

(2) "Dependents" include:

(a) a payee's spouse;

(b) a payee's minor children; and

(c) all other persons for whom the payee is legally obligated to provide support, including alimony.

(3) "Discounted present value" means the present value of future payments determined by discounting the payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

(4) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from the consideration.

(5) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

(6) "Interested parties" means, with respect to any structured settlement:

(a) the payee;

(b) any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;

(c) the annuity issuer;

(d) the structured settlement obligor; and

(e) any other party that has continuing rights or obligations under the structured settlement.

(7) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under Subsection 78B-6-1503(5).

(8) "Payee" means an individual who:

(a) is receiving tax free payments under a structured settlement; and  
(b) proposes to make a transfer of payment rights under the settlement.  
(9) "Periodic payments" includes both recurring payments and scheduled future lump sum payments.

(10) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of Section 130 of the United States Internal Revenue Code.

(11) "Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

(12) "Settled claim" means the original tort claim resolved by a structured settlement.

(13) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

(14) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(15) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(16) "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer if:

(a) (i) the payee is domiciled in this state; or  
(ii) the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in this state;  
(b) the structured settlement agreement is approved by a court in this state; or  
(c) the structured settlement agreement is expressly governed by the laws of this state.

(17) "Terms of the structured settlement" include, with respect to any structured settlement, the terms of:

(a) the structured settlement agreement;  
(b) the annuity contract;  
(c) any qualified assignment agreement; and  
(d) any order or other approval of any court or other government authority that authorized or approved the structured settlement.

(18) (a) Subject to Subsection (18)(b), "transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration.

(b) "Transfer" does not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to:

(i) redirect the structured settlement payments to:  
(A) the insured depository institution; or  
(B) an agent or successor in interest to the insured depository institution; or

(ii) otherwise enforce a blanket security interest against the structured settlement payment rights.

(19) "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

(20) (a) Subject to Subsection (20)(b), "transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including:

- (i) court filing fees;
- (ii) attorney fees;
- (iii) escrow fees;
- (iv) lien recordation fees;
- (v) judgment and lien search fees;
- (vi) finders' fees;
- (vii) commissions; and
- (viii) other payments to a broker or other intermediary.

(b) "Transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

(21) "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1503. Required disclosures to payee.**

Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 point, setting forth:

(1) the amounts and due dates of the structured settlement payments to be transferred;

(2) the aggregate amount of the payments;

(3) the discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the Applicable Federal Rate used in calculating the discounted present value;

(4) the gross advance amount;

(5) an itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any of the fees and disbursements;

(6) the net advance amount;

(7) the amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and

(8) a statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1504. Approval of transfers of structured settlement payment rights.**

Direct or indirect transfer of structured settlement payment rights may not be effective and a structured settlement obligor or annuity issuer may not be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that:

- (1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
- (2) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing; and
- (3) the transfer does not contravene any applicable statute or the order of any court or other government authority.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1505. Effects of transfer of structured settlement payment rights.**

Following a transfer of structured settlement payment rights under this chapter:

- (1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.
- (2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:
  - (a) if the transfer contravenes the terms of the structured settlement, for any taxes incurred by the parties as a consequence of the transfer; and
  - (b) for any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the parties with the order of the court or arising as a consequence of the transferee's failure to comply with this part.
- (3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees.
- (4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this part.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1506. Procedure for approval of transfers.**

- (1) An application under this part for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court which approved the structured settlement agreement.
- (2) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 78B-6-1504, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization, including with

the notice:

- (a) a copy of the transferee's application;
- (b) a copy of the transfer agreement;
- (c) a copy of the disclosure statement required under Section 78B-6-1503;
- (d) a listing of each of the payee's dependents, together with each dependent's age;
- (e) notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (f) notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than 15 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1507. General provisions -- Construction.**

- (1) The provisions of this part may not be waived by any payee.
- (2) (a) Any transfer agreement entered into on or after May 6, 2002 by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state.
- (b) A transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.
- (3) The transfer of structured settlement payment rights may not extend to any payments that are life-contingent unless, before the date on which the payee signs the transfer agreement, the transferee establishes and agrees to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:
  - (a) periodically confirming the payee's survival; and
  - (b) giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.
- (4) A payee who proposes to make a transfer of structured settlement payment rights may not incur any of the following on the basis of a failure of the transfer to satisfy the requirements of this part:
  - (a) a penalty;
  - (b) a forfeiture of any application fee or other payment; or
  - (c) any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the requirements of this part.
- (5) (a) This part may not be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into before May 6, 2002 is valid or invalid.
- (b) This part does not apply to a transfer of payment rights under workers' compensation, as defined in Section 34A-2-422, that takes effect on or after April 30, 2007.
- (6) Compliance with Section 78B-6-1503 and fulfillment of the conditions set

forth in Section 78B-6-1504 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1508. Effective date.**

This part shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after May 6, 2002; provided, however, that nothing contained in this part shall imply that any transfer under a transfer agreement reached prior to that date is either effective or ineffective.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1601. Title.**

This part is known as the "Social Host Liability Act."

Enacted by Chapter 187, 2009 General Session

**78B-6-1602. Definitions.**

As used in this part:

- (1) "Alcoholic beverage" is as defined in Section 32B-1-102.
- (2) "Emergency response provider" means an individual providing services on behalf of:
  - (a) a law enforcement agency;
  - (b) a fire suppression agency; or
  - (c) another agency or a political subdivision of the state.
- (3) "Law enforcement officer" is as defined in Section 53-13-103.
- (4) "Local entity" means the political subdivision for which an emergency response provider provides emergency services.
- (5) "Minor" means an individual under the age of 18 years old.
- (6) (a) Subject to Subsection (6)(b), "response costs" means the actual costs directly associated with an emergency response provider responding to, remaining at, or otherwise dealing with an underage drinking gathering, including:
  - (i) the costs of medical treatment to or for an emergency response provider injured because of an activity described in this Subsection (6)(a); and
  - (ii) the cost of repairing damage to equipment or property of a local entity that is attributable to an activity described in this Subsection (6)(a).
- (b) "Response costs" does not include:
  - (i) the salary and benefits of an emergency response provider for the amount of time spent responding to, remaining at, or otherwise dealing with an underage drinking gathering; or
  - (ii) the administrative costs attributable to an activity described in Subsection (6)(b)(i).
- (7) "Underage drinking gathering" means a gathering of two or more individuals:

- (a) at which an individual knowingly serves, aids in the service of, or allows the service of an alcoholic beverage to an underage person; and
- (b) to which an emergency response provider is required to respond, except for a response related solely to providing medical care at the location of the gathering.
- (8) "Underage person" means an individual under the age of 21 years old.

Amended by Chapter 276, 2010 General Session

**78B-6-1603. Citation -- Civil penalty.**

- (1) An individual may not knowingly conduct, aid, or allow an underage drinking gathering.
- (2) A law enforcement officer may issue a written citation to an individual who violates Subsection (1).
- (3) An individual issued a citation under this section is subject to a civil penalty equal to the sum of:
  - (a) (i) a fine of \$250 for a first citation; or
  - (ii) double the fine imposed for an immediately preceding citation for each subsequent citation; and
  - (b) the response costs of the underage drinking gathering, not to exceed \$1,000.
- (4) Two or more individuals who violate Subsection (1) for the same underage drinking gathering are jointly and severally liable under this section for response costs attributable to the underage drinking gathering.
- (5) An individual who violates Subsection (1) is liable under this part regardless of whether the individual is present at an underage drinking gathering.
- (6) If a minor is issued a citation under this section, the minor's parent or legal guardian may not be held liable for an amount of civil penalty imposed on the minor as a result of the minor's citation.

Enacted by Chapter 187, 2009 General Session

**78B-6-1604. Collection of civil penalty.**

- (1) A local entity shall mail a notice of the civil penalty amount for which an individual is liable by first-class or certified mail within 14 days of the day after which a citation is issued under Section 78B-6-1603. The notice shall contain the following information:
  - (a) the name of the one or more individuals being held liable for the payment of the civil penalty;
  - (b) the address of the location where the underage drinking gathering occurs;
  - (c) the date and time of the response;
  - (d) the name of an emergency service provider who responds to the underage drinking gathering; and
  - (e) an itemized list of the response costs for which the one or more individuals are liable.
- (2) (a) An individual liable under Section 78B-6-1603 shall remit payment of a civil penalty to the local entity that provides the notice required by Subsection (1) within 90 days of the date on which the notice is sent.

- (b) Notwithstanding Subsection (2)(a), a local entity may:
  - (i) reduce the amount of a civil penalty; or
  - (ii) negotiate a payment schedule for a civil penalty.
- (3) (a) A civil penalty imposed under this section may be appealed as provided in Section 78B-6-1606.
- (b) Notwithstanding Subsection (4), the payment of a civil payment is stayed upon an appeal made pursuant to Section 78B-6-1606.
- (4) (a) The amount of a civil penalty owed under this part is considered a debt owed to the local entity by the individual held liable under this part for an underage drinking gathering.
- (b) After the notice required by Subsection (1), an individual owing a civil penalty is liable in a civil action brought in the name of the local entity for recovery of:
  - (i) the civil penalty; and
  - (ii) reasonable attorney fees.

Enacted by Chapter 187, 2009 General Session

**78B-6-1605. Reservation of legal options -- Ordinances.**

- (1) (a) This part may not be construed as a waiver by a local entity of a right to seek reimbursement for actual costs of response services through another legal remedy or procedure.
- (b) The procedure provided for in this part is in addition to any other civil or criminal statute.
- (c) This part does not limit the authority of a law enforcement officer or private citizen to make an arrest for a criminal offense arising out of conduct regulated by this part.
- (2) A local entity may impose by ordinance a stricter provision related to the conduct of an underage drinking gathering, including the imposition of a different civil penalty amount, except that the ordinance shall provide that a civil penalty for an underage drinking gathering may only be imposed by a local entity for which an emergency response provider provides services at the underage drinking gathering.

Enacted by Chapter 187, 2009 General Session

**78B-6-1606. Appeals.**

An individual upon whom is imposed a civil penalty under this part may appeal the imposition of the civil penalty pursuant to the procedures used by the local entity for appealing a traffic citation or a violation of an ordinance.

Enacted by Chapter 187, 2009 General Session

**78B-6-1701. Cause of action for identity theft.**

- (1) A petitioner who has been injured by a violation of Section 76-6-1102, Identity Fraud, or Section 76-10-1801, Communications Fraud, may recover from the perpetrator:
  - (a) compensatory damages in the amount of \$1,000 or up to three times the

amount of actual damages, whichever is greater;

(b) attorney fees; and

(c) court costs.

(2) Actual damages may include:

(a) replacement or reissuance costs for checks and any personal identification documents;

(b) the value of the petitioner's time spent:

(i) repairing their credit history or rating; and

(ii) attending civil or administrative hearings necessary to resolve any debt, lien, or other obligation arising from the offense;

(c) lost wages; and

(d) any other verifiable costs the court may choose to include.

(3) The court may award punitive damages in addition to compensatory damages.

(4) A perpetrator who is not tried or found not guilty of a violation of Section 76-6-1102, Identity Fraud, or Section 76-10-1801, Communications Fraud, may be found liable under this section if the court finds by a preponderance of the evidence that the perpetrator participated in a violation and the petitioner was injured as a result.

(5) (a) A perpetrator who is found guilty of a violation of Section 76-6-1102, Identity Fraud, or Section 76-10-1801, Communications Fraud, shall be found liable under this section.

(b) If restitution was ordered in the criminal action, the amount ordered shall be deducted from any damages awarded under this section.

Enacted by Chapter 143, 2010 General Session

**78B-6-1801. Title.**

This part is known as the "Renewal of Judgment Act."

Enacted by Chapter 22, 2011 General Session

**78B-6-1802. Renewal by motion.**

A court of record may renew a judgment issued by a court if:

(1) a motion is filed within the original action;

(2) the motion is filed before the statute of limitations on the original judgment expires;

(3) the motion includes an affidavit that contains an accounting of the original judgment and all postjudgment payments, credits, and other adjustments which are provided for by law or are contained within the original judgment;

(4) the facts in the supporting affidavit are determined by the court to be accurate and the affidavit affirms that notice was sent to the most current address known for the judgment debtor;

(5) the time for responding to the motion has expired; and

(6) the fee required by Subsection 78A-2-301(1)(l) has been paid to the clerk of the court.

Enacted by Chapter 22, 2011 General Session

**78B-6-1803. Notice.**

Notice of a motion for renewal of judgment is served in accordance with the Rules of Civil Procedure and opposition may be filed pursuant to the rules.

Enacted by Chapter 22, 2011 General Session

**78B-6-1804. Date and duration of judgment.**

Upon granting a motion for the renewal of judgment, the court shall enter an order which renews the original judgment from the date of entry of the order or from the scheduled expiration date of the original order, whichever occurs first, for the same amount of time as the original judgment.

Enacted by Chapter 22, 2011 General Session

**78B-6-1901. Title -- Purpose.**

(1) This part is known as the "Distribution of Bad Faith Patent Infringement Letters Act."

(2) The Legislature acknowledges that it is preempted from passing any law that conflicts with federal patent law. However, this part seeks to protect Utah businesses from the use of demand letters containing abusive and bad faith assertions of patent infringement, and build Utah's economy, while at the same time respecting federal law and not interfering with legitimate patent enforcement efforts.

Enacted by Chapter 310, 2014 General Session

**78B-6-1902. Definitions.**

As used in this part:

(1) (a) "Demand letter" means a letter, email, or other written communication directed to a target and asserting or claiming that the target has engaged in patent infringement.

(b) "Demand letter" does not include a complaint filed in a United States District Court asserting patent infringement or discovery responses or other papers filed in an action.

(2) "Target" means a person or entity residing in, incorporated in, or organized under the laws of this state that has received a demand letter and includes the customers, distributors, and agents of the person or entity.

(3) "Sponsor" means the party or parties responsible for distribution of a demand letter.

Enacted by Chapter 310, 2014 General Session

**78B-6-1903. Prohibition against distribution of demand letters containing bad faith assertions of patent infringement.**

(1) A sponsor may not distribute a demand letter to a target that includes a bad

faith assertion of patent infringement.

(2) A court may consider the following factors as evidence in determining whether a sponsor has or has not distributed a demand letter containing a bad faith assertion of patent infringement, but no one factor may be considered conclusive as to whether a demand letter contains a bad faith assertion of patent infringement:

- (a) the demand letter does not contain all of the following information:
  - (i) the patent numbers of the patent or patents being asserted;
  - (ii) the name and address of the current patent owner or owners and any other person or entity having the right to enforce or license the patent;
  - (iii) the name and address of all persons and entities holding a controlling interest in the persons and entities identified in Subsection (2)(a)(ii) of this section;
  - (iv) the identification of at least one claim of each asserted patent that is allegedly infringed;
  - (v) for each claim identified in Subsection (2)(a)(iv), a description of one or more allegedly infringing products, including the make, model number, and other specific identifying indicia of allegedly infringing products, services, or methods made, used, offered for sale, sold, imported or performed by the target, provided in sufficient detail to allow the target to assess the merits of the assertion of patent infringement; and
  - (vi) identification of each judicial or administrative proceeding pending as of the date of the demand letter where the validity of the asserted patent or patents is under challenge; or
- (b) the demand letter contains any of the following:
  - (i) an assertion of patent infringement based on a patent or a claim of a patent that has been previously held invalid or unenforceable in a final judicial or administrative decision from which no appeal is possible;
  - (ii) an assertion that a complaint has been filed alleging that the target has infringed the patent when no complaint has, in fact, been filed;
  - (iii) an assertion of infringement based on acts occurring after the asserted patent or claim at issue has expired or been held invalid or unenforceable;
  - (iv) an assertion of infringement of a patent that the sponsor does not own or have the right to enforce or license; or
  - (v) an assertion that the amount of compensation demanded will increase if the target retains counsel to defend against the assertions in the demand letter or if the target does not pay the sponsor within a period of 60 days or less;
  - (vi) a false or misleading statement; or
  - (vii) the demand letter demands payment of a license fee or response within an unreasonably short period of time depending on the number and complexity of the claims.

(3) A court may consider the following factors as evidence to mitigate a conclusion that a sponsor has distributed a demand letter containing a bad faith assertion of patent infringement:

- (a) the demand letter contains the information described in Subsection (2)(a);
- (b) the demand letter lacks the information described in Subsection (2)(a) and when the target requests the information, the sponsor provides the information within a reasonable period of time;
- (c) the sponsor engages in a good faith effort to establish that the target has

infringed the patent and to negotiate an appropriate remedy;

(d) the sponsor has made a substantial investment in the practice of the patent or in the production or sale of a product or item covered by the patent; and

(e) the sponsor is:

(i) the inventor or joint inventor of the patent or the original assignee of the inventor or joint inventor, or an entity owned by or affiliated with the original assignee; or

(ii) an institution of higher education or a technology transfer organization owned by or affiliated with an institution of higher education.

Enacted by Chapter 310, 2014 General Session

**78B-6-1904. Action -- Enforcement -- Remedies -- Damages.**

(1) A target who has received a demand letter asserting patent infringement in bad faith, or a person aggrieved by a violation of this part, may bring an action in district court. The court may award the following remedies to a target who prevails in an action brought pursuant to this part:

(a) equitable relief;

(b) actual damages;

(c) costs and fees, including reasonable attorney fees; and

(d) punitive damages in an amount to be established by the court, of not more than the greater of \$50,000 or three times the total of damages, costs, and fees.

(2) The attorney general may conduct civil investigations and bring civil actions pursuant to this part. In an action brought by the attorney general under this part, the court may award or impose any relief it considers prudent, including the following:

(a) equitable relief;

(b) statutory damages of not less than \$750 per demand letter distributed in bad faith; and

(c) costs and fees, including reasonable attorney fees, to the attorney general.

(3) This part may not be construed to limit other rights and remedies available to the state or to any person under any other law.

(4) A demand letter or assertion of a patent infringement that includes a claim for relief arising under 35 U.S.C. Sec. 271(e)(2) is not subject to the provisions of this part.

(5) The attorney general shall report annually to the Executive Appropriations Committee regarding the number of investigations and actions brought under this part. The report shall include:

(a) the number of investigations commenced;

(b) the number of actions brought under the provisions of this part;

(c) the current status of actions brought under Subsection (5)(b); and

(d) final resolution of actions brought under this part, including any recovery under Subsection (2).

Enacted by Chapter 310, 2014 General Session

**78B-6-1905. Bond.**

(1) Upon motion by a target and a finding by the court that a target has

established a reasonable likelihood that a sponsor has made a bad faith assertion of patent infringement in a demand letter in violation of this part, the court shall require the sponsor to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim under this part and amounts reasonably likely to be recovered under Subsections 78B-6-1904(1)(b) and (c), conditioned upon payment of any amounts finally determined to be due to the target.

(2) A hearing on the appropriateness and amount of a bond under this section shall be held if either party requests it.

(3) A bond ordered pursuant to this section may not exceed \$250,000. The court may waive the bond requirement if it finds the sponsor has available assets equal to the amount of the proposed bond or for other good cause shown.

Enacted by Chapter 310, 2014 General Session